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Presidential Documents

Title 3—

The President

Memorandum of July 13, 2016

Delegation of Authority Under Section 610 of the Foreign Assistance Act of 1961

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to you the authority, subject to fulfilling the requirements of section 652 of the Foreign Assistance Act of 1961 (FAA), and section 7009(d) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Division F, Public Law 111–117) (FY 2010 SFOAA), as carried forward by the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Division B, Public Law 112–10), and section 7009(d) of the FY 2012 SFOAA (Division I, Public Law 112–74), to make the requisite determination and execute the transfer under section 610 of the FAA of up to $21,380,000 in FY 2011 International Narcotics Control and Law Enforcement (INCLE) funds and up to $435,000 in FY 2012 INCLE funds to the Economic Support Fund account in order to provide assistance for Burma.

You are authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, July 13, 2016

[FR Doc. 2016–17639
Filed 7–22–16; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Memorandum of July 13, 2016

Delegation of Authority Under Sections 614(a)(1) and 610 of the Foreign Assistance Act of 1961

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to you the following authorities, subject to fulfilling the requirements of sections 614(a)(3) and 652 of the Foreign Assistance Act of 1961 (FAA), and section 7009(d) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Division F, Public Law 111–117), in order to provide assistance for Nigeria:

(1) the authority under section 614(a)(1) of the FAA to determine whether it is important to the security interests of the United States to furnish assistance using up to $19,708,000 of Fiscal Year (FY) 2010 supplemental International Narcotics Control and Law Enforcement (INCLE) funds without regard to any other provision of law within the purview of section 614(a)(1) of the FAA; and

(2) the authority under section 610 of the FAA to make the requisite determination and execute the transfer of up to $7,968,000 of these FY 2010 supplemental INCLE funds to the Economic Support Fund account.

You are authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, July 13, 2016

[FR Doc. 2016–17640
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Rules and Regulations

Federal Register

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Monday, July 25, 2016

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2015–1087; Special Conditions No. 25–622–SC]

Special Conditions: Avmax Aviation Services Inc., Bombardier Model DHC–8–100/–200/–300 Series Airplanes; Installed Rechargeable Lithium Batteries and Battery Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Bombardier Model DHC–8–100/–200/–300 series airplanes. These airplanes, as modified by Avmax Aviation Services Inc. (Avmax), will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is rechargeable lithium batteries to replace the existing nickel-cadmium and lead-acid rechargeable batteries. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Avmax July 25, 2016. We must receive your comments by September 8, 2016.

ADDRESSES: Send comments identified by docket number FAA–2015–1087 using any of the following methods:

- Federal eRegulations Portal: Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC, 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nazih Khaouly, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2432; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions is impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected airplanes. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On September 8, 2015, Avmax Aviation Services Inc. applied for a supplemental type certificate (STC) for the installation of rechargeable lithium batteries to replace the existing nickel-cadmium and lead-acid rechargeable batteries in Bombardier Model DHC–8–100/–200/–300 series airplanes.

The Model DHC–8–100/–200/–300 series airplanes are transport-category, twin-engine turboprops with a maximum capacity of 37 (100 and 200 series) or 50 (300 series) passengers and a maximum takeoff weight of 36,300 lbs (100 and 200 series) or 43,000 lbs (300 series).

Type Certification Basis

Under the provisions of 14 CFR 21.101, Avmax must show that the Bombardier Model DHC–8–100/–200/–300 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A13NM, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

In addition, if the regulations incorporated by reference do not provide adequate standards regarding the change, the applicant must comply with certain regulations in effect on the date of application for the change.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model DHC–8–100/–200/–300 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of 14 CFR 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for an STC to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model.

In addition to the applicable airworthiness regulations and special conditions, the Model DHC–8–100/–200/–300 series airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Bombardier Model DHC–8–100/–200/–300 series airplanes, as modified by Avmax, will incorporate the following novel or unusual design feature: Installed rechargeable lithium batteries and battery systems.

Rechargeable lithium batteries are a novel or unusual design feature in transport-category airplanes. This type of battery has certain failure, operational, and maintenance characteristics that differ significantly from those of the nickel-cadmium and lead-acid rechargeable batteries currently approved for installation on transport-category airplanes.

Discussion

The current regulations governing installation of batteries in large transport-category airplanes were derived from Civil Air Regulations (CAR) part 4b.625(d) as part of the re-codification of CAR 4b that established 14 CFR part 25 in February 1965. The recodified battery requirements, § 25.1353(c)(1) through (c)(4), basically reworded the CAR requirements.

Increased use of nickel-cadmium batteries in small airplanes resulted in increased incidents of battery fires and failures that led to additional rulemaking affecting large transport-category airplanes as well as small airplanes. On September 1, 1977, and March 1, 1978, with Amendments 25–41 and 25–42, respectively, the FAA added paragraphs (c)(5) and (c)(6) to § 25.1353, governing nickel-cadmium battery installations on large transport-category airplanes. On December 10, 2007, Amendment 25–123 moved the contents of paragraph (b) in § 25.1353 to the new subpart H, resulting in the relocation of the regulations governing the installation of batteries in § 25.1353 from paragraph (c) to paragraph (b).

The proposed use of rechargeable lithium batteries for equipment and systems on airplanes prompted the FAA to review the adequacy of these existing battery regulations. Our review indicates that the existing regulations do not adequately address several failure, operational, and maintenance characteristics of lithium batteries, which could affect the safety and reliability of the lithium battery installations.

At present, the airplane industry has limited experience with the use of lithium batteries in applications involving commercial aviation. However, other users of this technology, ranging from wireless-telephone manufacturers to the electric-vehicle industry, have noted safety problems with rechargeable lithium batteries. These problems include overcharging, over-discharging, and flammability of cell components.

1. Overcharging

In general, lithium batteries are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (*i.e.,* thermal runaway) than their nickel-cadmium or lead-acid counterparts. This condition is especially true for overcharging, which causes heating and destabilization of the components of the cell, leading to the formation (by plating) of highly unstable metallic lithium. The metallic lithium can ignite, resulting in a self-sustaining fire or explosion. In addition, the severity of thermal runaway, due to overcharging, increases with increasing battery capacity due to the higher amount of electrolyte in large batteries.

2. Over-Discharging

Discharge of some types of lithium battery cells beyond a certain voltage (typically 2.4 volts), can cause corrosion of the electrodes of the cell, resulting in loss of battery capacity that cannot be reversed by recharging. This loss of capacity may not be detected by the simple voltage measurements commonly available to flightcrews as a means of checking battery status—a problem shared with nickel-cadmium batteries.

3. Flammability of Cell Components

Unlike nickel-cadmium and lead-acid batteries, some types of lithium batteries use liquid electrolytes that are flammable. The electrolyte can serve as a source of fuel for an external fire if there is a breach of the battery container.

These problems, which users of lithium batteries experience, raise concerns about the use of these batteries in commercial aviation. The intent of these special conditions is to establish appropriate airworthiness standards for lithium battery installations in the Bombardier Model DHC–8–100/–200/–300 series airplanes and to ensure, as required in §§ 25.601 and 25.1309, that these battery installations are not hazardous or unreliable.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to Bombardier Model DHC–8–100/–200/–300 series airplanes as modified by Avmax. Should Avmax apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A13NM incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on two model series of airplanes. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon publication in the **Federal Register**. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Bombardier Model DHC–8–100/–200/–300 series airplanes modified by Avmax Aviation Services Inc.

In lieu of the requirements of 14 CFR 25.1353(c)(1) through (c)(4) at Amendment 25–51, all rechargeable lithium batteries and battery systems on Model DHC–8–100/–200/–300 airplanes, as modified by Avmax Aviation Services Inc., must be designed and installed as follows:

1. Safe cell temperatures and pressures must be maintained during any foreseeable charging or discharging condition and during any failure of the charging or battery monitoring system not shown to be extremely remote. The rechargeable lithium battery installation must preclude explosion in the event of those failures.

2. Design of the rechargeable lithium batteries must preclude the occurrence of self-sustaining, uncontrolled increases in temperature or pressure.

3. No explosive or toxic gases emitted by any rechargeable lithium battery in normal operation, or as the result of any failure of the battery charging system, monitoring system, or battery installation which is not shown to be extremely remote, may accumulate in hazardous quantities within the airplane.

4. Installations of rechargeable lithium batteries must meet the requirements of § 25.863(a) through (d).

5. No corrosive fluids or gases that may escape from any rechargeable lithium battery may damage surrounding structure or any adjacent systems, equipment, or electrical wiring of the airplane in such a way as to cause a major or more-severe failure condition, in accordance with § 25.1309(b) and applicable regulatory guidance.

6. Each rechargeable lithium battery installation must have provisions to prevent any hazardous effect on structure or essential systems caused by the maximum amount of heat the battery can generate during a short circuit of the battery or of its individual cells.

7. Lithium battery installations must have a system to control the charging rate of the battery automatically, designed to prevent battery overheating or overcharging, and,

a. A battery-temperature sensing and over-temperature warning system with a means for automatically disconnecting the battery from its charging source in the event of an over-temperature condition, or,

b. A battery-failure sensing and warning system with a means for automatically disconnecting the battery from its charging source in the event of battery failure.

8. Any rechargeable lithium battery installation, the function of which is required for safe operation of the airplane, must incorporate a monitoring and warning feature that will provide an indication to the appropriate flight crewmembers whenever the state-of-charge of the batteries has fallen below levels considered acceptable for dispatch of the airplane.

9. The instructions for continued airworthiness required by § 25.1529 must contain maintenance requirements to assure that the battery is sufficiently charged at appropriate intervals specified by the battery manufacturer and the equipment manufacturer that contain the rechargeable lithium battery or rechargeable lithium battery system. This is required to ensure that rechargeable lithium batteries and rechargeable lithium battery systems will not degrade below specified ampere-hour levels sufficient to power the airplane systems for intended applications. The instructions for continued airworthiness must also contain procedures for the maintenance of batteries in spares storage to prevent the replacement of batteries with batteries that have experienced degraded charge retention ability or other damage due to prolonged storage at a low state of charge. Replacement batteries must be of the same manufacturer and part number as approved by the FAA. Precautions should be included, in the instructions for continued airworthiness maintenance instructions, to prevent mishandling of the rechargeable lithium battery and rechargeable lithium battery systems, which could result in short-circuit, or other unintentional impact damage caused by dropping batteries or other destructive means that could result in personal injury or property damage.

Note 1: The term "sufficiently charged" means that the battery will retain enough of a charge, expressed in ampere-hours, to ensure that the battery cells will not be damaged. A battery cell may be damaged by lowering the charge below a point where the battery experiences a reduction in the ability to charge and retain a full charge. This reduction would be greater than the reduction that may result from normal operational degradation.

Note 2: These special conditions are not intended to replace § 25.1353(c) in the certification basis of Bombardier Model DHC–8–100/–200/–300 series airplanes. These special conditions apply only to rechargeable lithium batteries and lithium battery systems and their installations on Bombardier Model DHC–8–100/–200/–300 series airplanes, as modified by Avmax. The requirements of § 25.1353(c) remain in effect for batteries and battery installations on Bombardier Model DHC–8–100/–200/–300 series airplanes that do not use lithium batteries.

Issued in Renton, Washington, on July 15, 2016.

Michael Kaszycki,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–17428 Filed 7–22–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1289; Directorate Identifier 2012–NE–43–AD; Amendment 39–18591; AD 2016–14–10]

RIN 2120–AA64

Airworthiness Directives; CFM International, S.A. Turbofan Engines Modified by Supplemental Type Certificate SE00034EN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are superseding airworthiness directive (AD) 2013–02–02 for certain CFM International, S.A. CFM56–3, CFM56–3B, and CFM56–3C turbofan engines. AD 2013–02–02 required removal from service of certain high-pressure turbine (HPT) disks manufactured by Global Material Solutions of Pratt & Whitney, at reduced maximum life limits. This AD corrects the serial numbers (S/Ns) listed in AD 2013–02–02. This AD was prompted by reports that certain HPT disk S/Ns in AD 2013–02–02 and in certain Pratt & Whitney service information are incorrect. We are issuing this AD to prevent uncontained release of multiple turbine blades, damage to the engine, and damage to the airplane.

DATES: This AD is effective August 9, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 9, 2016.

We must receive any comments on this AD by September 8, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; phone: 860–565–7700; fax: 860–565–1605. You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7125. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2012–1289.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2012–1289; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information, regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kenneth Steeves, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7765; fax: 781–238–7199; email: *kenneth.steeves@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

On January 14, 2013, we issued AD 2013–02–02, Amendment 39–17323 (78 FR 5712, January 28, 2013), (“AD 2013–02–02”) for all CFM56–3, CFM56–3B, and CFM56–3C turbofan engines modified by Supplemental Type Certificate SE00034EN, with certain HPT disks, installed. AD 2013–02–02 required removal from service of certain high-pressure turbine (HPT) disks manufactured by Global Material Solutions of Pratt & Whitney, at reduced maximum life limits. AD 2013–02–02 resulted from a report of a forging process error during manufacture of these HPT disks. We issued AD 2013–02–02 to prevent uncontained release of multiple turbine blades, damage to the engine, and damage to the airplane.

Actions Since AD 2013–02–02 Was Issued

Since we issued AD 2013–02–02, we received reports that certain HPT disk S/Ns GLKBAA9307, GLKBAA9335, GLKBAA9404, GLKBAA9407, and GLKBAA9409, in AD 2013–02–02 and in certain Pratt & Whitney service information are incorrect. The correct S/Ns are: GKLBAA9307, GKLBAA9335, GKLBAA9404, GKLBAA9407, and GKLBAA9409.

Related Service Information Under 1 CFR Part 51

We reviewed Pratt & Whitney Corp. Special Instruction No. 6F–12, Revision A, dated May 17, 2016. The Special Instruction describes procedures for reducing the maximum life limit for affected HPT disks. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires removal from service of affected HPT disks at certain recalculated reduced maximum life limits.

FAA's Justification and Determination of the Effective Date

No domestic operators use this product. Therefore, we find that notice and opportunity for prior public comment are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA–2012–1289; Directorate Identifier 2012–NE–43–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD affects 0 engines installed on airplanes of U.S. registry. We also estimate that it will take about 61 hours per engine to comply with this AD. The average labor rate is $85 per hour. Required parts cost about $0 per engine. Based on these figures, we estimate the cost of this AD on U.S. operators to be $0.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, “General requirements.” Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2013–02–02, Amendment 39–17323 (78 FR 5712, January 28, 2013), ("AD 2013–02–02"), and adding the following new AD:

2016–14–10 CFM International, S.A. Turbofan Engines Modified by Supplemental Type Certificate SE00034EN: Amendment 39–18591; Docket No. FAA–2012–1289; Directorate Identifier 2012–NE–43–AD.

(a) Effective Date

This AD is effective August 9, 2016.

(b) Affected ADs

This AD supersedes AD 2013–02–02.

(c) Applicability

This AD applies to CFM International, S.A. CFM56–3, CFM56–3B, and CFM56–3C turbofan engines, modified by Supplemental Type Certificate SE00034EN, with a high-pressure turbine (HPT) disk, part number (P/N) 880026, serial number (S/N) GKLBAA9307, GKLBAA9335, GKLBAA9404, GKLBAA9407, or GKLBAA9409, installed.

(d) Unsafe Condition

This AD was prompted by reports that certain HPT disk serial numbers in AD 2013–02–02 and in certain Pratt & Whitney service information are incorrect. We are issuing this AD to prevent uncontained release of multiple turbine blades, damage to the engine, and damage to the airplane.

(e) Compliance

Comply with this AD within the compliance times specified, unless already done.

(1) For CFM56–3, CFM56–3B, and CFM56–3C turbofan engines operating to 20,100 lbs maximum takeoff (MTO) thrust, remove the HPT disk from service on or before accumulating 8,000 cycles-since-new (CSN).

(2) For CFM56–3B and CFM56–3C turbofan engines operating to 22,100 lbs MTO thrust, remove the HPT disk from service on or before accumulating 8,000 CSN.

(3) For CFM56–3C turbofan engines operating to 23,500 lbs MTO thrust, remove the HPT disk from service on or before accumulating 4,000 CSN.

(4) For HPT disks that have been used in multiple models or thrust installations, use the formula in the ADDED DATA section of Pratt & Whitney Special Instruction 6F–12, Revision A, dated May 17, 2016 to calculate the remaining life on the disk.

(f) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov*.

(g) Related Information

For more information about this AD, contact Kenneth Steeves, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7765; fax: 781–238–7199; email: *kenneth.steeves@faa.gov*.

(h) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Pratt & Whitney Corp. Special Instruction No. 6F–12, Revision A, dated May 17, 2016.

(ii) Reserved.

(3) For Pratt & Whitney service information identified in this AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; phone: 860–565–7700; fax: 860–565–1605.

(4) You may view this service information at FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7125.

(5) You may view this service information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Burlington, Massachusetts, on July 11, 2016.

Colleen M. D'Alessandro,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2016–17442 Filed 7–22–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No.: FAA–2010–0302; Amdt. No. 93–99]

RIN 2120–AK84

Extension of the Requirement for Helicopters to Use the New York North Shore Helicopter Route

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rulemaking amends the expiration date of the final rule requiring pilots operating civil helicopters under Visual Flight Rules to use the New York North Shore Helicopter Route when operating along that area of Long Island, New York. The current rule expires on August 6, 2016. The FAA finds it necessary to extend the rule for an additional four years to preserve the current operating environment while the FAA conducts ongoing helicopter research that will be considered to determine appropriate future actions.

DATES: This final rule is effective August 7, 2016, through August 6, 2020.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see "How To Obtain Additional Information" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Kenneth Ready, Airspace and Rules Team, AJV–113, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3396; email *kenneth.ready@faa.gov*.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the

United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

The FAA has broad authority and responsibility to regulate the operation of aircraft, the use of the navigable airspace and to establish safety standards for and regulate the certification of airmen, aircraft, and air carriers. (49 U.S.C. 40104 *et seq.*, 40103(b)). The FAA's authority for this rule is contained in 49 U.S.C. 40103 and 44715. Under section 40103, the Administrator of the FAA has authority to "prescribe air traffic regulations on the flight of aircraft (including regulations on safe altitudes) for . . . (B) protecting individuals and property on the ground. (49 U.S.C. 40103(b)(2)(B)). In addition, section 44715(a), provides that to "relieve and protect the public health and welfare from aircraft noise," the Administrator of the FAA, "as he deems necessary, shall prescribe . . . (ii) regulations to control and abate aircraft noise . . ."

Good Cause for Immediate Adoption Without Prior Notice

Section 553(d)(3) of the Administrative Procedure Act requires that agencies publish a rule not less than 30 days before its effective date, except as otherwise provided by the agency for good cause found and published with the rule. The current rule expires on August 6, 2016. To prevent confusion among pilots using the route and avoid disruption of the current operating environment, the FAA finds that good cause exists to make this rule effective in less than 30 days.

I. Background

In response to concerns from a large number of local residents regarding noise from helicopters operating over Long Island, the FAA issued the New York North Shore Helicopter Route final rule (77 FR 39911, July 6, 2012). The rule requires civil helicopter pilots operating Visual Flight Rules (VFR), whose route of flight takes them over the north shore of Long Island between the Visual Point Lloyd Harbor (VPLYD) waypoint and Orient Point (VPOLT), to use the North Shore Helicopter Route, as published in the New York Helicopter Chart ("the Chart"). The rule was promulgated to maximize use of the route, as published per the Chart, to secure and improve upon decreased levels of noise that had been voluntarily achieved. Under the rule, pilots are permitted to deviate from the route and altitude requirements when necessary for safety, weather conditions, or transitioning to or from a destination or point of landing. In addition, the rule is based on a voluntary VFR route that was developed by the FAA, working with the Eastern Region Helicopter Council. The voluntary route originally was added to the Chart on May 8, 2008.

The rule originally had a two-year duration and was set to terminate on August 6, 2014. The FAA limited the duration of the rule because, at the time of promulgation, the FAA did not have data on the current rate of compliance with the voluntary route nor the circumstances surrounding an operator's decision not to use the route. The FAA concluded there would be no reason to retain the rule if the FAA determined the noise situation along the North Shore of Long Island did not improve. Accordingly, the Agency decided that the rule would expire in two years, if it was determined there is no meaningful improvement in the effects of helicopter noise on quality of life or that the rule was otherwise unjustified. Specifically, the FAA stated that should there be such an improvement, the FAA may, after appropriate notice and opportunity for comment, decide to make the rule permanent. Likewise, should the FAA determine that reasonable modification could be made to the route to better address noise concerns (and any other relevant concerns), the FAA may choose to modify the rule after notice and comment.

On June 23, 2014, the FAA issued a two-year extension of the rule's termination date to provide additional time for the Agency to assess the rule's impact and consider whether to make the mandatory use of the route permanent (79 FR 35488). Since then, the FAA has been engaged in a variety of helicopter research initiatives that could inform the Agency's future actions on this rule. Topics addressed by these research efforts, described in more detail below, include modeling of helicopter performance and noise, helicopter noise-abatement procedures, and community response to helicopter noise.

The FAA has initiated efforts to improve helicopter performance-modeling capabilities for more accurate operational impact analysis. This research is scheduled to be completed in 2016, with an implementation plan for incorporation into the FAA's Aviation Environmental Design Tool (AEDT).[1] Also, through the National Academies of Science, Engineering, and Medicine Transportation Review Board (TRB), a research project was initiated through the Airport Cooperative Research Program (ACRP) to provide helicopter noise-modeling guidance. The project reviewed, evaluated, and documented current helicopter noise prediction models and identified potential improvements to AEDT to better capture the unique complexity of helicopter operations. The research was published in January 2016. The FAA is currently reviewing the findings and will consider making modeling improvements in AEDT based on those findings. Improved modeling will allow better quantification of the noise impacts of helicopter operations and better inform decisions on measures to abate helicopter-noise impacts.

The FAA's Center of Excellence, called the Aviation Sustainability Center (ASCENT), has funded Pennsylvania State University to conduct modeling of helicopters to identify potential noise-abatement procedures that may result in quieter operations. The first phase of this project focuses on integrating the tools needed to predict helicopter-source noise and providing the necessary integration within AEDT to be able to illustrate potential noise impacts of such noise abatement procedures. The second phase of the project is focused on developing noise-abatement procedures for either individual helicopters or classes of helicopters. These phases of the research are scheduled to be completed by August 2017. At that time, the FAA will need to determine whether to initiate and support flight tests during 2018, which would be necessary prior to advancing the use of the procedures with helicopter operators.

The FAA is also engaged in research and collaboration with helicopter operators, seeking to educate pilots on the benefits of noise-abatement procedures, when to institute them, and the piloting procedures for achieving quieter operations. This project addresses noted issues by developing a strategy for pilot awareness of noise-abatement techniques, looking at ways to illustrate the benefits through modeling, and examining the potential for video training on how to incorporate noise-abatement procedures. This research will utilize the findings of the ASCENT project described above.

Finally, the FAA has two projects to review methodologies to determine community response to helicopter operations. One project is administered through the ACRP. The objectives of the ACRP research project are to: (1) Determine the significance of acoustical and non-acoustical factors that influence community annoyance to helicopter noise, (2) describe how these factors compare to those contributing to fixed-wing aircraft community annoyance, and (3) develop and validate a research method to relate helicopter-noise exposure to surveyed community annoyance. This project is two-thirds complete, and ACRP expects the project to be completed in late 2016. Further, the FAA has initiated a second project in an effort to test a different methodology for gathering information on community annoyance for residents in the vicinity of helicopter operations. The FAA has gathered data for this project, and the analysis is underway. The goal is to report on the methodology in late 2016, and when completed, it will provide an alternative method for developing an annoyance survey for helicopters.

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[1] AEDT is the FAA's tool for computing noise, emissions and fuel burn.

Both of these projects provide an opportunity for the FAA to compare methodologies and determine the most effective approach for conducting a helicopter noise-annoyance survey. At the completion of the projects, the FAA intends to select the most effective, survey methodology and determine if a larger scale, community survey would better inform the FAA on appropriate methods to address concerns over helicopter noise. The FAA will then consider the need for a comprehensive helicopter community annoyance survey. While the research reaches maturity by the end of 2017, applying the research will take longer.

II. The Final Rule

This final rule extends for an additional four years (*i.e.,* to August 6, 2020) the requirement for pilots of civil helicopters to use the North Shore Helicopter Route when transiting along the north shore of Long Island. The FAA expects that four years will be sufficient time to consider results of the described research efforts in determining appropriate future actions on the rule. Extending the requirement to use the North Shore Helicopter Route during this period will continue to foster maximum use of the North Shore Helicopter Route and avoid disruption of the current operating environment. Therefore, the FAA finds that a four-year extension of the current rule is warranted.

III. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

This final rule extends for an additional four years (*i.e.,* to August 6, 2020) the requirement for pilots of civil helicopters to use the North Shore Helicopter Route when transiting along the north shore of Long Island. Extending the current rule for four years is expected to provide the FAA with sufficient time to consider results of the described research efforts in determining appropriate future actions on the rule. The FAA determined the 2012 final rule would impose minimal costs because many of the existing operators were already complying with the final rule requirements. As this final rule extends those requirements, the FAA expects this final rule imposes only minimal costs.

The FAA has, therefore, determined that this final rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes that this final rule does not have a significant economic impact on a substantial number of small entities for the following reasons. With this final rule, the regulatory provisions already in place will be extended four years to provide the FAA with sufficient time to consider results of the described research efforts in determining appropriate future actions on the rule. The final regulatory flexibility analysis for the 2012 final rule determined that it had a minimal cost impact on a substantial number of small entities. This final rule extends those requirements. Thus, the FAA expects a minimal economic impact on a substantial number of small entities.

Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that the rule will preserve the current operating environment and is not considered an unnecessary obstacle to foreign commerce.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $155 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

G. Environmental Analysis

FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," identifies FAA actions that, in the absence of extraordinary circumstances, are categorically excluded from requiring an environmental assessment (EA) or environmental impact statement (EIS) under the National Environmental Policy Act. This rule qualifies for the categorical exclusion in paragraph 5–6.6.f of that Order, which includes "[r]egulations. . . excluding those that if implemented may cause a significant impact on the human environment. There are no extraordinary circumstances that warrant preparation of an EA or EIS.

IV. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a "significant energy action" under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

V. How To Obtain Additional Information

A. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies* or

3. Accessing the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/*.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Commenters must identify the docket or amendment number of this rulemaking.

All documents the FAA considered in developing this rulemaking action, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

List of Subjects in 14 CFR Part 93

Air traffic control, Airspace, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of Title 14 of the Code of Federal Regulations as follows:

PART 93–SPECIAL AIR TRAFFIC RULES

■ 1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44715, 44719, 46301.

■ 2. Add § 93.101 to read as follows:

§ 93.101 Applicability.

This subpart prescribes a special air traffic rule for civil helicopters operating VFR along the North Shore, Long Island, New York, between August 6, 2012, and August 6, 2020.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC, on July 15, 2016.

Michael P. Huerta,

Administrator.

[FR Doc. 2016–17427 Filed 7–22–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0256]

RIN 1625–AA09

Drawbridge Operation Regulation; Fox River, DePere to Oshkosh, WI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule for all drawbridges over the Fox River between DePere, WI and Oshkosh, WI. This rule will establish drawbridge schedules that coincide with lock schedules during the boating season and standard winter drawbridge schedules.

DATES: This rule is effective August 24, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type USCG–2016–0256. In the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216–902–6085, email *Lee.D.Soule@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive Order
FR	Federal Register
NEPA	National Environmental Policy Act of 1969
NPRM	Notice of proposed rulemaking
RFA	Regulatory Flexibility Act of 1980
SNPRM	Supplemental notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code
WIS–DOT	Wisconsin Department of Transportation
FRNSA	Fox River Navigational System Authority
CN–RR	Canadian National Railroad

II. Background Information and Regulatory History

On May 6, 2016, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Fox River, DePere to Oshkosh, WI, in the **Federal Register** (81 FR 27373). We did receive one comment on this rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. Currently, the regulation for Fox River drawbridges (33 CFR 117.1087) includes the opening schedule for drawbridges in Green Bay, WI, where large commercial vessel traffic continues to transit. This rule does not include any changes to the schedules for drawbridges over the commercial ship channel in Green Bay.

The sections of the current regulation that includes all other drawbridges between river mile 7.13 in DePere, WI at the DePere Pedestrian bridge, to river mile 58.3 in Oshkosh, WI, describe inconsistent dates and times for required drawbridge openings, particularly for the four highway drawbridges in Oshkosh. They also include reference to the George Street bridge at mile 7.27. The George Street bridge has been removed in the past 15 years. In the current regulation, the Oshkosh drawbridges contain exemptions during certain dates and times where the drawbridges are not required to open for vessels or vessels must provide advance notice prior to passing during nighttime hours.

This rule establishes the requirement for all drawbridges, except the Canadian National Railroad (CN–RR) bridge at mile 55.72 in Oshkosh, to open on signal between the hours of 8 a.m. and midnight each day from April 27 to October 7 every year. This schedule will match the lock schedule established by FRNSA and drawbridge schedules used by WIS–DOT. Between the hours of midnight and 8 a.m., except for the CN–RR bridge in Oshkosh, all drawbridges would open for vessels if at least 2-hours advance notice of arrival is provided.

The CN–RR bridge at mile 55.72 in Oshkosh is located where Fox River feeds into the southwest section of Lake Winnebago. The portion of Fox River in the Oshkosh area, and Lake Winnebago, are among the busiest portions of the Fox River System for recreational vessel traffic. The CN–RR bridge provides 6 feet of vertical clearance in the closed position and prevents most vessels from passing under the bridge, thereby requiring the drawbridge to open regularly for vessels. This is also the location of first responders and public safety vessels that may require the bridge to open at any time to perform rescue or emergency operations on Lake Winnebago. Vessels in distress or seeking shelter from weather on Lake Winnebago may also need the CN–RR bridge to open at any time. A delay in bridge openings at this location may endanger life or property and is therefore exempted from the proposed 2-hour advance notice requirement from vessels for all other drawbridges between midnight and 8 a.m.

All drawbridges would be required to open if at least 12-hours advance notice is provided prior to passing between October 8 and April 26 each year.

This rule removes the George Street bridge from the regulation, establishes consistent annual dates for drawbridge schedules between river miles 7.13 and 58.3, eliminates currently exempted bridge opening times during certain days and times in Oshkosh, makes permanent the requirement for vessels to provide 2-hours advance notice between midnight and 8 a.m., and establishes the winter bridge operating schedules throughout the entire river system.

The dates, times, and conditions have been employed by local authorities for approximately 10 years and are generally accepted by vessel operators in the area as established conditions. The dates, times, and conditions have also been reviewed and accepted by WIS–DOT and FRNSA during the development of this rule.

IV. Discussion of Comments, Changes and the Final Rule

The Coast Guard provided a comment period of 45 days and received one comment. Canadian National Railway Company (CN–RR) wished to clarify for the record that the bridge described in the NPRM as the "CN–RR bridge at Mile 55.72 over Fox River in Oshkosh, WI" should reflect Wisconsin Central Ltd. as the entity holding common carrier responsibilities at this location. The Coast Guard recognizes that Wisconsin Central, Ltd. is owned by CN–RR, but for consistency in describing bridge owners throughout the Fox River system in official publications, and since the bridges are locally known and referred to as "Canadian National" bridges, we will continue to describe the railroad drawbridge at Mile 55.72 in Oshkosh as the CN–RR bridge.

Additionally, CN–RR commented on the disparity of proposed bridge operations between nearby highway bridges and the CN–RR bridge at Mile 55.72 in Oshkosh, WI. The NPRM excluded the CN–RR bridge at Mile

55.72 in Oshkosh from operating with the same schedule as the nearby highway bridges requiring 2-hours advance notice for openings between the hours of midnight and 8am due to the low vertical clearance (6-feet) of the bridge in the closed position that restricts most vessels from passing underneath, the proximity of the CN–RR bridge at the entrance to Fox River from Lake Winnebago, the location of nearby first-responders, and the need to open for vessels seeking shelter from weather on Lake Winnebago. The exclusion of the CN–RR bridge from the same conditions as the nearby highway bridges in Oshkosh is due to safety concerns for vessel operators and is retained in this final rule.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protesters.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the ability that vessels can still transit the bridge given advanced notice during times when vessel traffic is at its lowest. This rule provides a drawbridge schedule that is virtually the same as has been used by vessel operators in the area for approximately 10 years.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard did not receive any comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule standardizes drawbridge schedules that have been in place and would not have a significant economic impact on any vessel owner or operator because the bridges will open with advance notice during low traffic times on the waterway or when ice conditions hinder normal navigation.

While some owners or operators of vessels intending to transit the bridges may be small entities, for the reasons stated in section V.A above, this rule would not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 117.1087, revise paragraphs (b) and (c) to read as follows:

§ 117.1087 Fox River.

* * * * *

(b) All drawbridges between mile 7.13 in DePere and mile 58.3 in Oshkosh, except the Canadian National Railroad bridge at mile 55.72, shall open as follows:

(1) From April 27 through October 7, the draws shall open on signal, except between the hours of midnight and 8 a.m., the draws shall open if at least 2-hours advance notice is given.

(2) From October 8 through April 26, the draws shall open if at least 12-hours advance notice is given.

(c) The draw of the Canadian National Railroad bridge at mile 55.72 shall open on signal, except from October 8 through April 26; the draw shall open if at least 12-hours advance notice is given.

* * * * *

Dated: July 12, 2016.

J.E. Ryan,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 2016–17541 Filed 7–22–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–1088]

RIN 1625–AA00

Safety Zone; Pleasure Beach Bridge, Bridgeport, CT

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of Pleasure Beach, Bridgeport, CT for Pleasure Beach Bridge. This temporary safety zone is necessary to provide for the safety of life on navigable waters. This regulation prohibits entry into, transit through, mooring or anchoring within the safety zone unless authorized by Captain of the Port (COTP), Sector Long Island Sound.

DATES: This rule is effective without actual notice from July 25, 2016 until December 31, 2016. For the purposes of enforcement, actual notice from July 1, 2016 until July 25, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2015–1088 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Petty Officer Jay TerVeen, Prevention Department, U.S. Coast Guard Sector Long Island Sound, telephone (203) 468–4446, email *Jay.C.TerVeen@uscg.mil*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
LIS	Long Island Sound
NPRM	Notice of Proposed Rulemaking
NAD 83	North American Datum 1983

II. Background Information and Regulatory History

The Coast Guard was made aware of damage to Pleasure Beach Bridge which creates a hazard to navigation. A temporary final rule entitled, "Safety Zone; Pleasure Beach Bridge, Bridgeport, CT" was published in the **Federal Register** (80 FR 79480).

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because doing so would be impracticable, given the imminent conclusion of the previous safety zone and the ongoing repairs. This rule is necessary to protect the safety of waterway users.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), and for the same reasons stated in the preceding paragraph, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

III. Legal Authority and Need for Rule

The legal basis for this temporary rule is 33 U.S.C. 1231.

On December 09, 2015, the Coast Guard was made aware of damage sustained to Pleasure Beach Bridge, Bridgeport, CT that has created a hazard to navigation. After further analysis of the bridge structure, the Coast Guard concluded that the overall condition of the structure created a continued hazard to navigation. The COTP Sector LIS has determined that the safety zone established by this temporary final rule is necessary to provide for the safety of life on navigable waterways.

IV. Discussion of the Rule

The safety zone established by this rule will cover all navigable waters of the entrance channel to Johnsons Creek in the vicinity of Pleasure Beach Bridge, Bridgeport, CT. This safety zone will be bound inside an area that starts at a point on land at position 41–10.2N, 073–10.7W and then east along the shoreline to a point on land at position 41–9.57N, 073–9.54W and then south across the channel to a point on land at position 41–9.52N, 073–9.58W and then west along the shoreline to a point on land at position 41–9.52N, 073–10.5W and then north across the channel back to the point of origin.

This rule prohibits vessels from entering, transiting, mooring, or anchoring within the area specifically designated as a safety zone during the period of enforcement unless authorized by the COTP or designated representative.

The Coast Guard will notify the public and local mariners of this safety zone through appropriate means, which may include, but are not limited to, publication in the **Federal Register**, the Local Notice to Mariners, and Broadcast Notice to Mariners.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget. The Coast Guard determined that this rulemaking is not a significant regulatory action for the following reasons: 1) persons or vessels desiring to enter the safety zone may do so with permission from the COTP Sector LIS or a designated representative; and 2) the Coast Guard will notify the public of the enforcement of this rule via appropriate means, such as via Local Notice to Mariners and Broadcast Notice to Mariners to increase public awareness of this safety zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This temporary rule involves the establishment of a safety zone. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination, a Categorical Exclusion Determination, and EA Checklist, will be in the docket for review. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–0503 to read as follows:

§ 165.T01–0503 Safety Zone; Pleasure Beach Bridge, Bridgeport, CT.

(a) *Location.* The following area is a safety zone: All navigable waters of the entrance channel to Johnsons Creek in the vicinity of Pleasure Beach Bridge, Bridgeport, CT bound inside an area that starts at a point on land at position 41°10′02.964″ N., 073°10′08.148″ W. and then east along the shoreline to a point on land at position 41°09′57.996″ N., 073°09′54.324″ W. and then south across the channel to a point on land at position 41°09′52.524″ N., 073°09′58.861″ W. and then west along the shoreline to a point on land at position 41°09′52.776″ N., 073°10′04.944″ W. and then north across the channel back to the point of origin.

(b) *Enforcement period.* This rule will be enforced from 12:00 a.m. on July 1, 2016 to 12:00 a.m. January 1, 2017.

(c) *Definitions.* The following definitions apply to this section: A "designated representative" is any commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port (COTP), Sector Long Island Sound, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. "Official patrol vessels" may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP Sector Long Island Sound. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(d) *Regulations.* (1) The general regulations contained in § 165.23 apply.

(2) In accordance with the general regulations in § 165.23, entry into or movement within this zone is prohibited unless authorized by the COTP, Long Island Sound.

(3) Operators desiring to enter or operate within the safety zone should contact the COTP Sector Long Island Sound at 203–468–4401 (Sector Sector Long Island Sound Command Center) or the designated representative via VHF channel 16 to obtain permission to do so.

(4) Any vessel given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP Sector Long Island Sound, or the designated on-scene representative.

(5) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

Dated: June 28, 2016.

E. J. Cubanski, III,

Captain, U. S. Coast Guard, Captain of the Port Sector Long Island Sound.

[FR Doc. 2016–17543 Filed 7–22–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0363]

RIN 1625–AA87

Security Zone, Delaware River, Schuylkill River; Philadelphia, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final Rule.

SUMMARY: The Coast Guard is establishing temporary security zones in the waters of the Delaware River, Schuylkill River, and Darby Creek, in Philadelphia, PA. These temporary zones are intended to restrict vessels from portions of the Delaware River, Schuylkill River, and Darby Creek during the Democratic National Convention from July 25, 2016, to July 29, 2016. During the enforcement period, no unauthorized vessels or people will be permitted to enter or move within the security zone without permission from the Captain of the Port or his designated representative. This security zone is necessary to provide security for the Democratic National Convention.

DATES: This rule is effective from 11:00 a.m. on July 25, 2016, to 1:00 a.m. on July 29, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0363 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Tom Simkins, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division, Coast Guard; telephone (215)271–4851, email *Tom.J.Simkins@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
COTP	Captain of the Port

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the final details for the Democratic National Convention were not known until July 12, 2016. Delaying the effective date by first publishing an NPRM and holding a comment period would be contrary to the rule's objectives of ensuring safety of life on the navigable waters and protection of the Democratic Nation Convention and the accompanying high-ranking government officials.

For similar reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port, Delaware Bay has determined that these temporary security zones are necessary to provide for the security of the Democratic Nation Convention and the accompanying high-ranking government officials, and to protect against sabotage or terrorist attacks to human life, vessels, mariners, and waterfront facilities at or near this event.

IV. Discussion of the Rule

The Democratic National Convention will take place in Philadelphia, PA from July 25, 2016 until July 29, 2016. During this event many high-ranking government officials will be arriving in Philadelphia, PA. The Coast Guard is establishing several security zones in portions of the Delaware River, Schuylkill River, and Darby Creek in Philadelphia, PA.

The first security zone includes all the waters of the Delaware River from the New Jersey shore line, to the Pennsylvania shore line, beginning at the west end of Little Tinicum Island extending in a Northeasterly direction and ending at the mouth of the Schuylkill River;

The second security zone includes all the waters of the Schuylkill River inside a boundary described as 500 yards south of the I–95 Bridge and ending 500 yards north of the George C. Platt Memorial Bridge.

The third security zone includes all waters of Darby Creek inside a boundary described as originating from 500 yards south of the Conrail Railroad Bridge and ending 100 yards north of the I–95 Bridge.

Access to this security zone will be restricted while the zone is being enforced. Only vessels or people specifically authorized by the Captain of the Port, Delaware Bay, or his designated representative may enter or remain in the regulated area. These security zones will be enforced with actual notice by the United States Coast Guard representatives on scene, as well as other methods listed in 33 CFR 165.7.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (Executive Orders) related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the security zone. Vessel traffic will be able to safely transit around this security zone which will impact a small designated area of the Delaware River, Schuylkill River, and Darby Creek in Philadelphia, PA for less than 12 hours. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 identifying the security zone locations and describing the process in which vessels can request permission to transit the security zones.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the security zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves three security zones which will be enforced for less than 12 hours at any one time and includes all the waters of the Delaware River from the New Jersey shore line, to the Pennsylvania shore line, beginning at the west end of Little Tinicum Island extending in a Northeasterly direction and ending at the mouth of the Schuylkill River; all the waters of the Schuylkill River inside a boundary described as 500 yards south of the I–95 bridge and ending 500 yards north of the George C. Platt Memorial Bridge; and all waters of Darby Creek inside a boundary described as 500 yards south of the Darby Creek Railroad Bridge and ending 100 yards north of the I–95 Bridge.

It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0363 to read as follows:

§ 165.T05–0363 Security Zone; Delaware River, and Schuylkill River; Philadelphia, PA.

(a) *Location.* The following areas are security zones:

(1) The first security zone includes all the waters of the Delaware River from the New Jersey shore line, to the Pennsylvania shore line, beginning at the est end of Little Tinicum Island extending in a Northeasterly direction and ending at the mouth of the Schuylkill River;

(2) The second security zone includes all the waters of the Schuylkill River inside a boundary described as 500 yards south of the I–95 Bridge and ending 500 yards north of the George C. Platt Memorial Bridge.

(3) The third security zone includes all waters of Darby Creek inside a boundary described as originating 500 yards south of the Conrail Railroad Bridge and ending 100 yards north of the I–95 Bridge.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel; as well as a Federal, State, and local officer designated by or assisting the Captain of the Port, Delaware Bay in the enforcement of the security zone.

(c) *Regulations.* (1) Under the general security zone regulations in subpart D of this part, no person or vessel may enter the security zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative on VHF–FM channel 16. Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period:* This rule is effective from 11:00 a.m. on July 25, 2016, to 1:00 a.m. on July 29, 2016.

Dated: July 19, 2016.

Benjamin A. Cooper,

Captain, U.S. Coast Guard, Captain of the Port, Delaware Bay.

[FR Doc. 2016–17440 Filed 7–22–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0678]

RIN 1625–AA00

Safety Zone; Illinois River Mile 69.3 to 69.8; Meredosia, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Illinois River from mile 69.3 to mile 69.8. This safety zone is needed to protect persons, property and infrastructure from potential damage and safety hazards associated with work being performed on new power lines across the river. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Upper Mississippi River (COTP). Deviation from the safety zone may be requested and will be considered on a case-by-case basis as specifically authorized by the COTP or a designated representative.

DATES: This rule is effective from July 25, 2016 through August 16, 2016. This rule will be enforced from 7 a.m. until 7 p.m. daily beginning on July 25, 2016 through August 16, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0678 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Sean Peterson, Chief of Prevention, U.S. Coast Guard; telephone 314–269–2332, email *Sean.M.Peterson@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency finds good cause that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM with respect to this rule because Ameren, the company performing the power line operations, notified the Coast Guard on July 8, 2016 of the dates for these operations, requiring helicopters to stretch power lines across the river. This notice did not allow for the full NPRM process to be completed. Due to the risks associated with power line work crossing the navigational channel, a safety zone is needed to protect persons and property on the waterway. It would be impracticable to publish a NPRM because the safety zone must be established beginning July 25, 2016. Broadcast Notice to Mariners and information sharing with waterway users will update mariners of the safety zone and enforcement times during the operations.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Providing 30 days notice would be impracticable because immediate action is needed to protect persons and property from the hazards associated with power line work crossing the navigable channel.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP has determined that potential hazards associated with using helicopters to stretch power lines across the navigational channel presents safety concerns for anyone within this limited area of the waterway. This rule provides additional safety measures, to protect persons and vessels, in the form of a safety zone from mile 69.3 to mile 69.8 on the Illinois River to protect those in the area and for the Coast Guard to maintain navigational safety.

IV. Discussion of Comments, Changes, and the Rule

The Coast Guard is establishing a temporary safety zone prohibiting access to the Illinois River from mile 69.3 to mile 69.8, extending the entire width of the river from 7 a.m. until 7 p.m. daily, beginning on July 25, 2016 and scheduled to end on August 16, 2016, or until conditions allow for safe navigation, whichever occurs earlier. Deviation from the safety zone may be requested and will be considered on a case-by-case basis as specifically authorized by the COTP or a designated representative. The COTP may be contacted by telephone at 314–269–2332 or can be reached by VHF–FM channel 16.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the limited location, enforcement periods and impacts on navigation. This rule establishes a temporary safety zone limiting access to a one-half mile area on the Illinois River from mile 69.3 to mile 69.8, for 12 hours each day for approximately 3 weeks. The impacts on navigation will be limited to ensure the safety of mariners and vessels during the period that helicopters will be pulling power lines across the navigational channel. Notifications of enforcement times will be communicated to the marine community via Broadcast Notice to Mariners. Deviation requests will be reviewed and considered on a case-by-case basis.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone on the Illinois River from mile 69.3 to mile 69.8. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0678 to read as follows:

§ 165.T08–0678 Safety Zone; Illinois River 69.3 to 69.8; Meredosia, IL.

(a) *Location.* The following area is a safety zone: All waters of the Illinois River mile 69.3 to 69.8, extending the entire width of the river.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Upper Mississippi River (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF–FM channel 16, or through Coast Guard Sector Upper Mississippi River at 314–269–2332. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This rule will be enforced from 7 a.m. until 7 p.m. daily beginning on July 25, 2016 through August 16, 2016.

Dated: July 18, 2016.

M.L. Malloy,

Captain, U.S. Coast Guard, Captain of the Port Upper Mississippi River.

[FR Doc. 2016–17240 Filed 7–22–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2016–OSERS–0005; CFDA Number: 84.160C.]

Final Priority—Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind Program

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a final priority under the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program. The Assistant Secretary may use this priority for competitions in fiscal year 2016 and later years. We take this action to provide training and technical assistance to better prepare novice interpreters to become highly qualified nationally certified sign language interpreters.

DATES: This priority is effective August 24, 2016.

FOR FURTHER INFORMATION CONTACT: Kristen Rhinehart-Fernandez, U.S. Department of Education, 400 Maryland Avenue SW., Room 5062, Potomac Center Plaza (PCP), Washington, DC 20202–2800. Telephone: (202) 245–6103 or by email: *Kristen.Rhinehart@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: Under the Rehabilitation Act of 1973 (Rehabilitation Act), as amended by the Workforce Innovation and Opportunity Act (WIOA), the Rehabilitation Services Administration (RSA) makes grants to public and private nonprofit agencies and organizations, including institutions of higher education, to establish interpreter training programs or to provide financial assistance for ongoing interpreter training programs to train a sufficient number of qualified interpreters throughout the country. The grants are designed to train interpreters to effectively interpret and transliterate using spoken, visual, and tactile modes of communication; ensure the maintenance of the interpreting skills of qualified interpreters; and provide opportunities for interpreters to improve their skills in order to meet both the highest standards approved by certifying associations and the communication needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind.

Program Authority: 29 U.S.C. 772(f).

Applicable Program Regulations: 34 CFR part 396.

We published a notice of proposed priority (NPP) for this competition in the **Federal Register** on April 7, 2016 (81 FR 20268). That notice contained background information and our reasons for proposing the particular priority.

Public Comment: In response to our invitation in the NPP, 26 parties submitted comments on the proposed priority. Generally, we do not address technical and other minor changes, or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition, we do not address general comments that raised concerns not directly related to the proposed priority.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priority since publication of the NPP follows.

State-Level Certification or Licensure

Comment: A few commenters suggested broadening the proposed outcomes for the Experiential Learning Model Demonstration Center (Center) beyond national certification to include State-level certification or licensure. These commenters noted that, in some States, the State certification system is used to prepare interpreters for advancement to national-level certification. Other States use the Educational Interpreter Performance Assessment (EIPA) and the Board for Evaluation of Interpreters (BEI) for certification or licensure to offer interpreting services within the State. Finally, one commenter stated that acknowledging the variability in State-to-State licensure and certification requirements is essential in meeting the goal of novice interpreters in the experiential learning program achieving national certification.

Discussion: One goal of this program is to increase the number and quality of nationally certified interpreters. We do not agree that modification of the proposed outcomes to include State-level certification or licensure is appropriate for the Center.

First, designating national certification as a desired outcome for novice interpreters in the experiential learning program will ensure consistency in the training of these interpreters, as well as the competencies these interpreters will possess by the end of the training period. This will also ensure that novice interpreters will effectively meet the evolving needs of youth and adults in the United States who are deaf and hard of hearing or are deaf-blind, including those who are consumers of the Vocational Rehabilitation (VR) system.

Second, there is limited information available on the reliability and validity of assessments used by States to confer certifications and licensures. For example, in some cases, an individual pays a fee to receive a license to work as an interpreter in a State, regardless of skill or competency. In other cases, assessments, such as the BEI, are State specific, and there is no information about how the specific levels of skills and competencies they assess compare with the level of skills and competencies required to pass other State-level licensure tests, let alone the national interpreter certification exam. Conversely, national certification assessments have undergone psychometric evaluation to ensure consistency, reliability, and validity of results.

Finally, the EIPA does not apply to the training we intend to be offered by the Center. The EIPA focuses on interpreting competencies that are necessary to effectively interpret in elementary and secondary general education settings. We intend for the Center to train interpreters with specific competencies that are necessary to effectively interpret for youth and adults who are deaf[1] or hard of hearing and individuals who are deaf-blind, including those who are VR consumers in transition from school to post-school activities in postsecondary education, employment, and community settings. None of this, however, prohibits applicants from using State certification or licensure as an internal benchmark, if applicable, for tracking participant progress towards achieving national certification.

Change: None.

Prospective Applicants

Comment: Many commenters addressed the proposed requirement that the lead applicant must be accredited by the Commission on Collegiate Interpreter Education (CCIE). Many commenters recommended removing this requirement because (1) CCIE accreditation is voluntary, (2) CCIE is not accredited by the Council for Higher Education Accreditation (CHEA), which is the body that accredits and sets standards for organizations that review and accredit higher education programs, and (3) attending a CCIE accredited interpreter education program is not a requirement for becoming a credentialed interpreter.

Several other commenters were concerned that the requirement would limit the pool of eligible applicants because only about one-third of 44 baccalaureate interpreting programs nationwide are CCIE accredited. In addition, there are five CCIE accredited associate of the arts (AA) degree interpreting programs.

A few commenters stated that the proposed requirement would mean that programs on the path to accreditation, private entities that do not possess or have such accreditation available to them, and non-CCIE accredited programs offering rigorous, high-quality instruction in American Sign Language (ASL)-English interpretation would not be eligible to serve as a lead applicant.

Several commenters stated that CCIE accreditation standards do not include several areas that are significant to the proposed priority, including accessibility of, access to, interaction with, and immersion in the Deaf community; having an available Deaf population to promote student training; and standards such as ASL fluency.

One commenter estimated the cost of accreditation from CCIE at $10,000 or more and noted that some organizations are not in a position to support CCIE-related costs at this time.

Finally, one commenter suggested that CCIE accreditation be considered as a secondary qualification, rather than a requirement for the lead applicant.

Discussion: We believe the proposed requirement for the lead applicant to be accredited by CCIE aligns with the goal of the Center to improve the quality of interpreters nationwide and therefore should be maintained in the priority.

While we recognize CCIE is not accredited by CHEA, we do not believe this will adversely impact the lead applicant's ability to effectively design and implement this Center because each accreditation has a different purpose. CHEA focuses on the quality of higher education institutions and programs in order for the public to know that an institution or program provides an overall quality education.

By contrast, the mission of CCIE is focused specifically on professionalism in the field of interpreter education through the accreditation of professional preparation programs, the development and revision of interpreter education standards, the encouragement of excellence in program development, a national and international dialogue on the preservation and advancement of standards in the field of interpreter and higher education, and the application of knowledge, skills, and ethics of the profession. There are currently 13 CCIE-accredited programs[2] across the country that would meet the lead applicant requirement for this competition. At present, CCIE is the only entity in the field of interpreter education that measures the standards of interpreter education programs.

We recognize that these standards are the minimum requirements for CCIE accreditation and a program may exceed these standards in many areas, including those indicated by the comments. One of the goals of the Center is to increase accessibility of and access to interaction and immersion in the Deaf community, having an available Deaf population to promote student training, and standards such as ASL fluency. As such, we believe the requirements in the priority support this goal.

We acknowledge that CCIE accreditation is voluntary and that attending a CCIE-accredited interpreter education program is not a requirement for becoming a credentialed interpreter. However, we believe that the interpreter education program should be accredited. The Center is then better positioned to incorporate interpreter education standards into the design and delivery of training and to evaluate its effectiveness in increasing the number of certified interpreters.

While non-CCIE accredited baccalaureate degree English-ASL programs are not eligible as the lead applicant, they may serve as members of the consortium. We respect and value non-CCIE accredited programs offering rigorous, high-quality interpreter education. We are also sensitive to budgetary and other constraints that may limit institutions pursuing CCIE accreditation. We encourage eligible lead applicants to consider a number of appropriate entities, including high-quality non-CCIE accredited baccalaureate degree interpreter education programs, to carry out the work of the consortium.

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[1] As used in this notice, the word "deaf" refers to (1) "deaf" and "Deaf" people, *i.e.* to the condition of deafness; (2) to "deaf, hard of hearing, and Deaf-Blind"; and (3) to individuals who are culturally Deaf and who use American Sign Language (ASL). When we use "Deaf," we refer only to the third group.

[2] *www.discoverinterpreting.com/?Find_an_ASL-English_Interpreting_program.*

Change: None.

Consideration of Other Eligible Applicants

Comment: Some commenters suggested consideration of other eligible lead applicants or as members of the consortium such as AA programs, associate in applied sciences (AAS) programs, and master's degree interpreter education programs that prepare interpreter educators in addition to hosting baccalaureate degree programs that prepare students to work in kindergarten through grade 12 (K–12) settings upon graduation.

Discussion: The proposed priority did not specify that programs offering both a bachelor's and master's degree in interpreter education could serve as lead applicants if the program holds CCIE accreditation. We agree that these programs should be eligible lead applicants and may also serve as members of the consortium, and we are revising the priority accordingly.

However, AA/AAS programs are not eligible lead applicants. Since July 2012, there has been an educational requirement for an individual to sit for the Registry of Interpreters for the Deaf National Interpreter Certification test. Specifically, candidates must possess, at a minimum, a bachelor's degree in any field or major, or a demonstrated educational equivalency. We want to ensure that, while the individuals served by the Center require additional skills training to be provided by the Center, they otherwise meet the requirements to sit for the National Certification examination.

Programs that prepare students to work in K–12 settings are not eligible lead applicants or members of the consortium because the focus of this program is to prepare novice interpreters to work in VR settings. We believe this focus was implied in the background section of the priority but recognize it was not clearly stated within the proposed priority. Therefore, we take this opportunity to provide further explanation to support the focus of this program.

The Workforce Innovation and Opportunity Act (WIOA) emphasizes support to transition-age youth and adults with disabilities through such activities as funding various VR services and training of qualified personnel. The final priority aligns with the WIOA framework by focusing on the training of qualified interpreters to work with transition-age youth and adults who are deaf, hard of hearing, or deaf-blind. Thus, programs that prepare students to work in K–12 settings are not eligible applicants or members of the consortium because WIOA funds do not support training of interpreters to work in K–12 settings, with the exception of transition services.

Change: Under the purpose of the priority, we have clarified that the Center must prepare novice interpreters to work in VR settings.

In paragraph (a) under "Establish a consortium" in the *Project Activities* section of the priority, we have clarified that an eligible consortium can be comprised of a designated lead applicant that operates both bachelor's and master's degree programs in interpreter education that are recognized and accredited by CCIE.

Members of a Consortium

Comment: A number of commenters asked that we clarify which entities must be represented in the consortium. One commenter recommended maintaining the proposed entities in order to gain the broadest analysis of effective models and practices possible.

In addition, commenters also stated that the entities participating in the consortium should be required to include individuals who are experienced and qualified interpreters, interpreter educators, trained mentors, and individuals who are deaf, as well as those who can model native (first language) fluency in ASL. One commenter stated that the most successful experiential learning programs include coaching, mentoring, and explicit instruction that focuses specifically on the skills for interacting in diverse cultural milieus.

Discussion: We agree that we need to clarify paragraph (b) under "Establish a consortium" and the types of entities that must be represented in the consortium. When we stated in the proposed priority that "members of the consortium must be staffed by or have access to experienced and certified interpreters, interpreter educators, and trained mentors with the capability in providing feedback and guidance to novice interpreters, and in serving as language models," we meant that members of the consortium must have on staff, or have access to, individuals who are deaf and who can model native (first language) fluency in ASL.

Applicants are encouraged to include in their consortium other appropriate entities such as VR agencies, community-based organizations, and State commissions. Applicants could develop at least one partnership with a community-based entity (for example, with a Commission for the Deaf that is knowledgeable and involved in the delivery of interpreter services), at least one partnership with industry or government agencies (*e.g.,* State VR agencies or American Job Centers) and at least one partnership with post-secondary settings (*e.g.,* universities that serve a large number of deaf and hard of hearing students). Each of these partnerships would yield different types of learning and coaching contexts and allow for dynamic application of new ideas and structures for possible replication. In addition, non-CCIE accredited baccalaureate degree English-ASL programs may serve as members of the consortium.

We agree that training for novice interpreters must include skills for interacting in diverse cultural milieus and, as such, members of the consortium must represent diverse linguistic and cultural minority backgrounds and be qualified to provide instruction on best practices for interpreting in diverse cultural and linguistic settings.

Change: In paragraph (b) under "Establish a consortium" in the *Project Activities* section of the priority, we clarified that members of the consortium must be staffed by or have access to experienced and certified interpreters, interpreter educators, individuals who are deaf, trained mentors, and first language models in ASL. We added that consortium members must represent diverse linguistic and cultural minority backgrounds and be qualified to provide instruction on best practices in interpreting in diverse cultural and linguistic settings.

Consortium Expectations in Terms of Cost Match

Comment: One commenter asked whether consortium members or other identified partners must contribute to the cost of implementation, either through direct or indirect contributions.

Discussion: The proposed priority did not address this question. The responsibility for costs associated with all aspects of the Center, such as program design, implementation, training activities, and evaluation, as well as oversight and management of the Center, will be determined and agreed upon by the lead applicant, members of the consortium, and other identified partners. This also applies to determining any direct or indirect costs or in-kind contributions made by the lead applicant, members of the consortium, and other identified partners. The notice inviting applications will specify whether there is a cost-matching requirement and, if so, it will confirm the percentage of the match. Regardless of how the lead applicant, consortium members, and other identified partners determine shared costs, it is ultimately the responsibility of the lead applicant to meet the cost-matching requirement.

Change: None.

Team Comprised of Native Language Users, Qualified Interpreters, and Trained Mentors

Comment: We received several comments about the proposed requirement for the consortium to establish a team of native language users, qualified interpreters, and trained mentors to partner with novice interpreters during and after successful completion of the experiential learning program. Overall, commenters recommended maintaining separation of these positions but indicated a need for clear definitions, roles, responsibilities, and the training and qualifications necessary for each position within the team. Rather than the Department developing its own definitions, one commenter recommended the Department use applicable definitions developed by the Office of Personnel Management when defining the roles of these team members. Two commenters stated that native language users not only include deaf individuals but also those individuals who have grown up using the language and are fluent in it (*e.g.,* children of deaf adults). In addition to serving as language models, native language users should provide mentorship in linguistic and cultural competencies. Another commenter suggested combining the roles of native language user and trained mentor.

Discussion: We will not further specify who must be a member of the team to work with novice interpreters. We believe applicants are best suited to assemble an inclusive and appropriate team. Applicants may define team members and determine the roles, responsibilities, and qualifications of these positions. While we acknowledge that some roles among team members may be shared or combined, we expect, however, the team to include, at minimum, native language users, qualified interpreters, and trained mentors, as well as other appropriate members. By not requiring other specific team members, we will also avoid inadvertently excluding potential team members.

The Department acknowledges there are interpreter-related definitions available through other Federal agencies. However, we want to ensure that any interpreter-related definitions are appropriate for the Center and align with the statute and regulations for this program.

In a notice of proposed rulemaking (NPRM) published in the **Federal Register** on April 16, 2015 (80 FR 20988), we proposed to amend the definition of a "qualified professional" to mean an individual who has (1) met existing certification or evaluation requirements equivalent to the highest standards approved by certifying associations; and (2) successfully demonstrated interpreting skills that reflect the highest standards approved by certifying associations through prior work experience." The term "qualified interpreter" used throughout the proposed priority is synonymous with "qualified professional." A notice of final rulemaking is anticipated to publish in late July.

Change: We replaced the term "qualified interpreter" with "qualified professional" for accuracy and consistency with our regulations. Under *Training Activities,* in paragraph (a)(1), we added that applicants must describe in their application the roles and responsibilities for each team member.

Project Timelines

Comment: Commenters generally supported the proposed timeline to plan and design the curriculum, develop training modules, and to implement a pilot experiential learning program within the first two years of the grant period. However, one commenter cautioned that expecting students to become ready-to-work interpreters by attending a four-year program is unrealistic. Another commenter reasoned that a sustainable program needs two to three years to design, implement, evaluate, revise, and continue implementation with three to four graduated cohorts in order to generate evidence of impact.

Discussion: We recognize that graduates from baccalaureate degree ASL-English interpreter training programs may not be immediately ready to work and that is why we are establishing a model demonstration center to better prepare novice interpreters to become nationally certified sign language interpreters. We also agree that adequate time is needed to analyze evidence and assess the program. One of the reasons for piloting the program in a single site by year two is to identify and resolve issues and challenges that may arise, as well as to make improvements to the content and delivery of the training based on feedback from the team working with the novice interpreters and the novice interpreters participating in the first pilot. This Center is a demonstration and, at the conclusion of the grant, we will assess program outcomes and determine whether or not an experiential learning approach had an impact in improving the preparation of novice interpreters. For these reasons, we believe the proposed timelines are reasonable.

Change: None.

Project Activities

Comment: Several commenters suggested that we include in the priority additional project activities that are associated with long-term success for ASL-English interpreters. Some examples of additional project activities included: (1) Volunteer interpreting experiences pairing experienced interpreters who agree to volunteer with novice interpreters; (2) in-service training programs built around individualized skills development activities/modules determined after a comprehensive diagnostic assessment to increase novice practitioner performance; (3) scripted training exercises involving real-life scenarios with actors/mentors from the Deaf community; (4) curricular modifications and differentiation strategies to serve novice interpreters who are children of deaf adults (CODAs), particularly CODAs of color; (5) socialization with the Deaf community; and (6) field-based induction programs that employ more direct supervision of work experiences than is typically available through mentorship.

Discussion: Applicants must meet the minimum proposed project activities and may add or incorporate other specific activities, including the activities described in the comments, as appropriate, in order to strengthen the design, curriculum, and training developed and delivered by the Center. We encourage applicants to include in their proposed project any additional activities that they believe would improve the preparation of novice interpreters.

Change: None.

Measures for Assessing the Improvement in Interpreting Skills of Novice Interpreters

Comment: Several commenters suggested that, to assess outcomes more effectively and in a way that goes beyond self-reported "meaningfulness," we require in the priority the use of specific assessment tools to measure the improvement in interpreting skills of novice interpreters, such as diagnostic assessments/reviews; tools that address the proficiency of educational interpreters, such as the Educational Interpreter Performance Assessment (EIPA) developed by Boys Town National Research Hospital; assessments used by the American Council for Teaching Foreign Languages, Texas Board for Evaluators of Interpreters, and Utah Interpreting Program; pre- and post-program scores on the American Sign Language Proficiency Inventory; or general assessment instruments like the Cultural Intelligence Scale, Intercultural Development Inventory, or other well-reviewed measures of intercultural competence. One commenter stated that measurement of instruction in core dispositions of novice interpreters is needed because without instruction in and measurement of elements of essential professional attributes, a novice interpreter may become more of a "language technician" but not a true mediator.

Discussion: We acknowledge there are several assessment tools that may be appropriate to measure the improvement in interpreting skills of novice interpreters, and we believe that applicants are better positioned to determine which tools are most appropriate for their proposed projects. Nothing in this priority prevents applicants from choosing to use any valid or reliable assessment tool to gauge the progress of novice interpreters. Any proposed instruments must be valid and reliable and the applicant must submit rationale to support the use of each instrument.

Change: We have added the requirements that any proposed instruments must be valid and reliable, and the applicant must submit rationale to support the use of each instrument, to paragraphs (b)(9) and (c) of the *Training Activities* section and paragraph (c)(1) in the *Application Requirements* section.

Pilot Sites

Comment: A few commenters asked that we clarify which entities are eligible to be pilot sites. More specifically, one commenter noted that the proposed priority indicated in one place that a partner organization may be a pilot site, while providing in another place that the pilot site must be an existing baccalaureate degree ASL-English interpretation program.

Discussion: We agree there was an inconsistency in the proposed priority. The pilot site entity must be hosted by a baccalaureate degree ASL-English program. This is essential to the priority because we believe these specific programs demonstrate the ability to effectively recruit and select cohort participants, as well as track and evaluate participants. However, to provide applicants with more flexibility, we also want to clarify that applicants may either identify eligible pilot sites in their application or describe the process and criteria they will use to identify eligible pilot sites upon award. We also clarify that partner organizations may serve as experiential learning sites.

Changes: We have revised paragraph (b)(1) in the *Training Activities* section of the priority to require applicants to identify at least three existing baccalaureate degree ASL-English interpretation programs to host the pilot sites. We have also added to paragraph (b)(1) that applicants may describe the process and criteria they will use to identify the pilot sites upon award.

Cohort Participants

Comment: Several commenters asked that the Department clarify the qualifications of novice interpreter applicants who would be selected to participate in the pilot sites. One commenter recommended removing the requirement for cohort participants to have a bachelor's degree in any field or major (as required to sit for the National Interpreter Certification exam). The commenter proposed that cohort participants who do not have a bachelor's degree could, instead, demonstrate equivalent knowledge and skills in ASL-English interpretation. Other commenters suggested that cohort participants include: (1) Individuals who are deaf or hard of hearing and who are preparing for the Certification of Deaf Interpreter (CDI) exam; (2) graduates of partner organizations preparing K–12 interpreters; and (3) graduates of baccalaureate degree programs who have not yet obtained program accreditation from the CCIE. One commenter stressed the importance of diversity and inclusion among cohort participants and of ensuring recruitment of students of color, trilingual students, deaf and deaf-blind students, and children of deaf adults.

Discussion: We agree that, to the extent possible, applicants must ensure diversity and inclusion among cohort participants and ensure recruitment of students of color, trilingual students, deaf and deaf-blind students, and children of deaf adults. While this was implied in the proposed priority, it was not explicitly stated and to clarify this we are adding paragraph (b)(5) in the *Training Activities* section of the priority.

We also agree that we need to clarify the required cohort participants. We intend for the Center to train interpreters with specific competencies that are necessary to effectively interpret for adults who are deaf or hard of hearing and individuals who are deaf-blind, including those who are VR consumers, in transition from school to post-school activities, postsecondary education, employment, and community settings. Therefore, graduates of partner organizations preparing K–12 interpreters are not appropriate to participate in the pilot.

Eligible cohort participants may include deaf individuals, students in their final one or two semesters of completing their degree from a CCIE- or non-CCIE-accredited baccalaureate degree ASL-English interpreter program, recent graduates of CCIE- and non-CCIE-accredited baccalaureate degree ASL-English interpreter education programs, and working novice interpreters who intend to obtain national certification and interpret for adults who are deaf or hard of hearing and individuals who are deaf-blind, including deaf consumers of the VR system. The recruitment and selection of cohort participants will be determined by the Center.

Change: We have expanded the list of possible cohort participants by deleting the requirement for the cohort to comprise graduates from baccalaureate degree ASL-English interpretation programs who are preparing for, or have not passed, the National Interpreter Certification knowledge and performance exams and who intend to work as interpreters, which was in paragraph (b)(2) of the *Training Activities* section of the proposed priority. We have also expanded the list of possible cohort participants by adding paragraphs (b)(4) and (b)(5) under the *Training Activities* section. Under paragraph (b)(4), applicants must ensure cohort participants intend to obtain national certification and interpret for adults who are deaf or hard of hearing and individuals who are deaf-blind, including deaf consumers of the VR system. We have provided that eligible cohort participants may include deaf individuals, students in their final one or two semesters of completing their degree from a CCIE or non-CCIE accredited baccalaureate degree ASL-English interpreter program, recent graduates of CCIE and non-CCIE accredited baccalaureate degree ASL-English interpreter education programs, and working novice interpreters. Under paragraph (b)(5), applicants must, to the extent possible, ensure diversity and inclusion among cohort participants and ensure recruitment of students of color, trilingual students, deaf and deaf-blind students, and children of deaf adults.

Comment: None.

Discussion: Upon further review of paragraph (b) of the *Training Activities* section of the priority, we believe that we should clarify the requirements for recruiting and selecting cohort participants and align this paragraph with other revisions we are making to this section.

Change: We have made several revisions to paragraph (b) of the *Training Activities* section of the priority. First, we have moved the requirement, in proposed paragraph (b)(2), that applicants provide a plan to ensure that at least one cohort is completed in each pilot site prior to the end of the project period into a new paragraph (b)(3). Second, we have moved a portion of paragraph (b)(3) into a new paragraph (b)(6) and added a provision requiring that applicants establish processes and procedures for recruitment and selection of cohort participants, including criteria to ensure cohort participants demonstrate the capability to successfully complete the program and obtain national certification. Third, we have added paragraph (b)(7) to require that applicants establish procedures to identify and provide technical assistance to cohort participants who may be "at risk" of dropping out of the program. Finally, we have added paragraph (b)(11) to provide that, upon award, all successful applicants must develop and effectively communicate to all cohort participants policies and procedures related to participation in the experiential learning program.

Cost of Cohorts

Comment: Some commenters disagreed with the proposed requirement that all activities must be offered at no cost to participants during the program. Commenters indicated that offering the experiential learning program at no cost does not allow buy-in from participants who may drop the program at any time since there is no penalty for doing so. One commenter suggested a reasonable fee be required for cohort participants and that, upon successful completion of the program, the fee could be refunded to the participant.

Discussion: We agree for the reasons commenters stated that it can be appropriate to charge reasonable fees and applicants may do so. Charging reasonable fees may not be appropriate in all circumstances, however. Some cohort participants may be fully capable of completing the program and attaining national certification but may not be in a position to pay even reasonable fees, and we would not want to exclude them from participating. Therefore, we encourage applicants that choose to charge reasonable fees to consider a process for waiving these fees on a case-by-case basis.

If an applicant chooses to charge reasonable fees, it must describe in the application how this fee will be determined. If successful, upon award, the applicant must develop internal policies and procedures for collecting and effectively managing these fees. Any fees retained as a result of a participant dropping out are considered program income. Therefore, applicants should refer to 2 CFR 200.307 for applicable regulations for program income.

Change: In paragraph (a)(1) of the *Training Activities* section of the priority, we have removed the proposed requirement that all activities must be offered at no cost to participants during the program. We have added paragraph (b)(10) to provide that applicants may choose to charge reasonable fees to cohort participants but must describe in their application how these fees will be determined. In addition, we have provided that, upon award, applicants must develop internal policies and procedures for collecting and effectively managing these fees, and for waiving these fees for a cohort participant if there is a financial hardship. Any fees retained as a result of a participant dropping out are considered program income.

Number of Cohorts

Comment: Several commenters recommended a specific number of cohorts and a number of novice interpreters per cohort. Generally, commenters supported cohorts of 8 to 12 novice interpreters based on the Conference of Interpreter Trainers' recommended classroom size for interpreter education classes. One commenter recommended following CCIE guidelines of up to 12 in a cohort. Other commenters suggested 3 to 4 cohorts with anywhere from 8 to 12 novice interpreters. One commenter indicated that class sizes need to be on the smaller side so that students can get more personalized and in-depth attention. Another commenter recommended the Department should not require a certain number of novice interpreters per cohort since this number could vary greatly among each program. However, the commenter suggested the Department could require the applicant to establish guidelines basing the number of interpreters in each cohort on the applicant's program size.

Discussion: We agree that the number of novice interpreters per cohort may vary depending on the pilot site. We also agree that novice interpreters will require personalized and in-depth attention. We revised the priority to allow applicants to provide a plan in their application for how they will determine the number of cohorts for each pilot site and the number of participants in each cohort upon award. Applicants should plan accordingly for all cohorts to complete the training program before the end of the project in order to evaluate and report on outcomes of each cohort in each pilot site.

Change: In paragraph (b)(2) of the *Training Activities* section of the priority, we have added the option for applicants to provide a plan for how they will determine the number of cohorts for each pilot site and the number of participants in each cohort upon award, rather than requiring that all applicants make this determination in the application.

General Comments

Comment: A couple of commenters suggested participants in the cohort should receive college credit or continuing education units for participation in an effort to elevate interest and recruitment into the program.

Discussion: We anticipate a number of cohort participants will be students in their final semester of completing their baccalaureate degree English-ASL program and, therefore, may not benefit from additional college credit. However, nothing in the priority prevents applicants from proposing to award college credits or continuing education units to participants. Should they choose to award such credits, applicants are expected in their application to describe their plans to do so.

Change: We have added paragraph (b)(8) in the *Training Activities* section of this priority to clarify that applicants may determine whether to award college credits or continuing education units to cohort participants, as appropriate, and to require applicants to describe any plans for awarding college credits or continuation education units in their application.

Comment: One commenter recommended an invitational priority or competitive preference for novice applicants.

Discussion: A novice applicant priority already exists under 34 CFR 77.225, so it is not necessary to establish one in this NFP. If we use the novice priority in a competition, we will provide notification in the applicable notice inviting application published in the **Federal Register**.

Change: None.

Comment: Two commenters recommended the priority support two additional areas to address unmet needs in the field. The first commenter indicated that research has provided a snapshot into the unmet needs of deaf or hard of hearing individuals and individuals who are deaf-blind, and, therefore, recommended we include a robust needs assessment (which was part of the 2010 interpreter training grants) within this priority. The second commenter recommended that we require grantees to undertake the research necessary to develop a psychometrically valid instrument because, they stated, no domain-specific instrument exists yet in the sign language interpreting field for evaluating intercultural competency.

Discussion: These activities are outside the purpose and intent of this priority.

Change: None.

Comment: While the majority of comments support the goals and intent of the proposed priority, five commenters recommended maintaining the current national and regional interpreter education centers.

Discussion: We do not believe maintaining the current structure of national and regional interpreter education centers is in the best interest of the field. The Department has funded interpreter training programs since 1964 to meet the needs of VR consumers who are deaf or hard of hearing and individuals who are deaf-blind. At each critical juncture, we have re-evaluated the interpreter training program to determine how to best meet the needs of consumers of interpreting services. In the course of this ongoing re-evaluation, we concluded that, since 2005, when the current priorities were established for the national and regional centers, the training needs of interpreters have changed as a result of new and emerging issues facing VR consumers who are deaf or hard of hearing and individuals who are deaf-blind. The Department gave serious consideration to how we could continue to effectively use our funds to influence the field of interpreter education and ultimately meet the current and future needs of VR consumers.

As we noted in the background section in the NPP, we believe the need for interpreting services continues to exceed the available supply of qualified interpreters. Interpreters must be qualified to work with both individuals with a range of linguistic competencies from a variety of cultural backgrounds and individuals with disabilities. Interpreters need additional education, training, and experience in order to meet certification standards, to bridge the graduation-to-credential gap, and to gain sufficient skills to interpret effectively. Therefore, we believe establishing a Model Demonstration Center will better prepare novice interpreters to become nationally certified sign language interpreters in order to meet the needs of individuals who are deaf and hard of hearing and individuals who are deaf-blind.

Change: None.

Comment: Several commenters offered additional strategies beyond the required logic model and project evaluation to ensure that grantees are evaluating their programs throughout planning, designing, and implementing the experiential learning curriculum. For example, commenters suggested that applicants could supplement or strengthen their evaluation using secondary sources such as research and investigative books, journal articles, and dissertations, and use national certifications such as the BEI or EIPA, portfolios, consumer endorsement, and other relevant methods of design.

Discussion: We acknowledge there are other potential strategies that could be used to ensure a program evaluation framework includes the planning, designing, and implementing of the experiential learning curriculum. Applicants may propose unique or additional strategies beyond the required logic model and program evaluation. Applicants should provide rationale in their application to support these additional strategies.

Change: None.

FINAL PRIORITY:

This notice contains one final priority.

Experiential Learning Model Demonstration Center for Novice Interpreters and Baccalaureate Degree ASL-English Interpretation Programs.

Final Priority:

The purpose of this priority is to fund a cooperative agreement for the establishment of a model demonstration center (Center) to: (1) Develop an experiential learning program that could be implemented through baccalaureate degree ASL-English programs or through partner organizations, such as community-based organizations, advocacy organizations, or commissions for the deaf or deaf-blind that work with baccalaureate degree ASL-English programs to provide work experiences and mentoring; (2) pilot the experiential learning program in three baccalaureate degree ASL-English programs and evaluate the results; and (3) disseminate practices that are promising or supported by evidence, examples, and lessons learned.

The Center must prepare novice interpreters to work in VR settings and be designed to achieve, at a minimum, the following outcomes:

(a) Increase the number of certified interpreters.

(b) Reduce the average length of time it takes for novice interpreters to become nationally certified after graduating from baccalaureate degree ASL-English interpretation programs; and

(c) Increase the average number of hours that novice interpreters, through the experiential learning program, interact with and learn from the local deaf community.

Project Activities

To meet the requirements of this priority, the Center must, at a minimum, conduct the following activities:

Establish a consortium

(a) The applicant must establish a consortium of training and technical assistance (TA) providers or use an existing network of providers to design and implement a model experiential learning program. An eligible consortium must be comprised of a designated lead applicant that operates a baccalaureate degree ASL-English interpretation program that is recognized and accredited by CCIE or that operates both bachelor's and master's degree programs in interpreter education that are recognized and accredited by CCIE; and

(b) Members of the consortium must be staffed by or have access to experienced and certified interpreters, interpreter educators, individuals who are deaf, trained mentors, and first language models in ASL. The consortium must also represent members with diverse linguistic and cultural minority backgrounds who are qualified to provide instruction on best practices in interpreting in diverse cultural and linguistic settings. All consortium members must demonstrate the capability to provide training, mentoring, and feedback in person or remotely to novice interpreters who are geographically dispersed across the country, including the territories.

Training Activities

(a) In years one and two, design and implement an experiential learning program that is based upon promising and best practices or modules in the preparation of novice interpreters to become certified interpreters. The program design must, at a minimum:

(1) Include a team that comprises native language users, qualified professionals, and trained mentors to partner with novice interpreters during and after successful completion of the experiential learning program. Applicants must describe in their application the roles and responsibilities for each team member. Roles for team members must include but are not limited to:

(i) Native language users who will serve as language models;

(ii) Qualified professionals who will act in an advisory role by observing, providing feedback, and discussing the novice interpreter's ability to accurately interpret spoken English into ASL and ASL into spoken English in a variety of situations for a range of consumers; and

(iii) Provide mentoring to novice interpreters, as needed. This may include one-on-one instruction to address specific areas identified by the advisor as needing further practice, as well as offering tools, resources, and guidance to novice interpreters to prepare them for potential challenges they may encounter as they grow and advance in the profession. One-on-one instruction may address, but is not limited to, meaning transfer (*e.g.*, accurately providing an equivalent message, appropriately handling register), ethical behavior, meeting the consumer's linguistic preference, managing the flow of information (*e.g.*, pace, density, turn-taking), and other related aspects of the interpreting task.

(2) Provide multiple learning opportunities, such as an internship with a community program, mentoring, and intensive site-specific work. Intensive site-specific work may task a novice interpreter, under close direction from the advisor interpreter, with providing interpreting services to deaf individuals employed at a work site, or to deaf students taking courses at college or enrolled in an apprenticeship program. Other learning modalities may be proposed and must include adequate justification.

(3) Emphasize innovative instructional delivery methods, such as distance learning or block scheduling (*i.e.*, a type of academic scheduling that offers students fewer classes per day for longer periods of time) that would allow novice interpreters to more easily participate in the program (*i.e.*, participants who need to work while in the program, have child care or elder care considerations, or live in geographically isolated areas);

(4) Provide experiential learning that engages novice interpreters with different learning styles;

(5) Provide interpreting experiences with a variety of deaf consumers who have different linguistic and communication needs and preferences, and are located in different settings, including VR settings (*e.g.*, VR counseling, assessments, job-related services, training, pre-employment transition services, transition services, post-employment services, etc.), American Job Centers, and other relevant workforce partner locations;

(6) Require novice interpreters to observe, discuss, and reflect on the work of the advisor interpreter;

(7) Require novice interpreters to interpret in increasingly more complex and demanding situations. The advisor interpreter must provide written and oral feedback that includes strengths and areas of improvement, as well as a discussion with the novice interpreter about interpretation options, ethical behavior, and how best to meet the communication needs of a particular consumer; and

(b) Pilot the experiential learning program in a single site by year two and expand to additional sites beginning in year three. Applicants must:

(1) Identify at least three existing baccalaureate degree ASL-English interpretation programs to host the pilot sites. The baccalaureate programs must use a curriculum design that is based upon current best practices in the ASL-English Interpreter Education profession. Applicants may identify the pilot sites in the application or describe the process and criteria they will use to identify the pilot sites upon award;

(2) Indicate in the application the number of cohorts for each pilot site and the number of participants in each cohort or provide a plan in the application for how this will be determined upon award;

(3) Provide a plan in the application to ensure that at least one cohort is completed in each pilot site prior to the end of the project period;

(4) Ensure cohort participants intend to obtain national certification and interpret for adults who are deaf or hard of hearing and individuals who are deaf-blind, including deaf consumers of the VR system. Cohort participants may include deaf individuals, students within one or two semesters of completing their interpreter education program, recent graduates of interpreter education programs, and working novice interpreters;

(5) To the extent possible, ensure diversity and inclusion among cohort participants and ensure recruitment of students of color, trilingual students, deaf and deaf-blind students, and children of deaf adults;

(6) Establish processes and procedures for recruitment and selection of cohort participants, including criteria to ensure cohort participants demonstrate the capability to successfully complete the program and obtain national certification. This may include, but is not limited to, submission of an application, relevant assessments, interviewing prospective participants, and obtaining recommendations from faculty at baccalaureate degree ASL-English interpretation programs and other appropriate entities;

(7) Establish procedures to identify and provide technical assistance to cohort participants who may be "at risk" of dropping out of the program;

(8) Determine if college credits or continuing education units will be awarded to cohort participants, as appropriate. Should applicants choose to do so, they must describe any plans for awarding college credits or continuation education units in their application;

(9) Describe any assessment tools that will be used to gauge the progress of novice interpreters. Any proposed instruments must be valid and reliable and the applicant must submit rationale to support the use of each instrument;

(10) Describe in their application how any reasonable fees that the applicant proposes to charge cohort participants will be determined. If successful, upon award, applicants must develop internal policies and procedures for collecting and effectively managing these fees, as well for waiving fees for a cohort participant if there is a financial hardship. Any fees retained as a result of a participant dropping out are considered program income. Therefore, applicants should refer to 2 CFR 200.307 for applicable regulations for program income; and

(11) Develop and effectively communicate to all cohort participants the policies and procedures related to participation in the experiential learning program.

(c) Conduct a formative and summative evaluation. Any proposed instruments must be valid and reliable and the applicant must submit rationale to support the use of each instrument. At a minimum, this must include:

(1) An assessment of participant outcomes from each cohort that

includes, at a minimum, level of knowledge and practical skill levels using pre- and post-assessments; feedback from novice interpreters, from interpreter advisors, including written feedback from observed interpreting situations, from deaf consumers, from trained mentors, including written feedback from mentoring sessions, and from others, as appropriate;

(2) Clear and specific measureable outcomes that include, but are not limited to:

(i) Improvement in specific linguistic competencies, as identified by the applicant, in English and ASL;

(ii) Improvement in specific competencies, as identified by the applicant, in ASL-English interpretation;

(iii) Outcomes in achieving national certification; and

(iv) The length of time for novice interpreters to become nationally certified sign language interpreters after participating in this project compared to the national average of 19–24 months.

Technical Assistance and Dissemination Activities

Conduct TA and dissemination activities that must include:

(a) Preparing and broadly disseminating TA materials related to practices that are promising or supported by evidence and successful strategies for working with novice interpreters;

(b) Establishing and maintaining a state-of-the-art information technology (IT) platform sufficient to support Webinars, teleconferences, video conferences, and other virtual methods of dissemination of information and TA.

Note: All products produced by the Center must meet government- and industry-recognized standards for accessibility, including section 508 of the Rehabilitation Act.

(c) Developing and maintaining a state-of-the-art archiving and dissemination system that—

(1) Provides a central location for later use of TA products, including curricula, audiovisual materials, Webinars, examples of practices that are promising or supported by evidence, and any other relevant TA products; and

(2) Is open and available to the public.

(d) Providing a minimum of two Webinars or video conferences over the course of the project to describe and disseminate information to the field about results, challenges, solutions, and practices that are promising or supported by evidence.

Note: In meeting the requirements for paragraphs (a), (b), and (c) of this section, the Center either may develop new platforms or systems or may modify existing platforms or systems, so long as the requirements of this priority are met.

Coordination Activities

(a) Establish an advisory committee. To effectively implement the *Training Activities* section of this priority, the applicant must establish an advisory committee that meets at least semi-annually. The advisory committee must include representation from all affected stakeholder groups (*i.e.*, interpreters, interpreter training programs, deaf individuals, and VR agencies) and may include other relevant groups. The advisory committee will advise on the strategies for establishing sites to pilot the experiential learning program, the approaches to the experiential learning program, modifications to experiential learning activities, TA, sustainability planning, and evaluating the effectiveness of the program, as well as other relevant areas as determined by the consortium.

(b) Establish one or more communities of practice[3] that focus on project activities in this priority and that act as vehicles for communication and exchange of information among participants in the experiential learning program, as well as other relevant stakeholders;

(c) Communicate, collaborate, and coordinate, on an ongoing basis, with other relevant Department-funded projects, as applicable; and

(d) Maintain ongoing communication with the RSA project officer and other RSA staff as required.

Application Requirements

To be funded under this priority, applicants must meet the application requirements in this priority. RSA encourages innovative approaches to meet the following requirements:

(a) Demonstrate, in the narrative section of the application under "Significance of the Project," how the proposed project will address the need for nationally certified sign language interpreters. To meet this requirement, the applicant must:

(1) Demonstrate knowledge of English/ASL competencies that novice interpreters must possess in order to enter and to complete an experiential learning program and, at the end of the program, to successfully obtain national certification;

(2) Demonstrate knowledge of practices that are promising or supported by evidence in training novice interpreters; and

(3) Demonstrate knowledge of practices that are promising or supported by evidence in providing experiential learning.

(b) Demonstrate, in the narrative section of the application under "Quality of Project Services," how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have historically been underrepresented based on race, color, national origin, gender, age, or disability in accessing postsecondary education and training;

(2) Identify the needs of intended recipients of training; and

(3) Ensure that project activities and products meet the needs of the intended recipients by creating materials in formats and languages that are accessible;

(4) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must identify and provide—

(i) Measurable intended project outcomes;

(ii) Evidence of an existing Memorandum of Understanding or a Letter of Intent between the lead applicant, members of the consortium, other proposed training and TA providers, and other relevant partners to establish a consortium that includes a description of each proposed partner's anticipated commitment of financial or in-kind resources (if any), how each proposed provider's current and proposed activities align with those of the proposed project, how each proposed provider will be held accountable under the proposed structure, and evidence to demonstrate a working relationship between the applicant and its proposed partners and key stakeholders and other relevant groups; and

(iii) A plan for communicating, collaborating, and coordinating with an advisory committee; key staff in State VR agencies, such as State Coordinators for the Deaf; State and local partner programs; Registry of Interpreters for the Deaf, Inc.; RSA partners, such as the Council of State Administrators of Vocational Rehabilitation and the National Council of State Agencies for the Blind; and relevant programs within the Office of Special Education and Rehabilitative Services (OSERS).

(3) Use a conceptual framework to design experiential learning activities,

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[3] A community of practice (CoP) is a group of people who work together to solve a persistent problem or to improve practice in an area that is important to them and who deepen their knowledge and expertise by interacting on an ongoing basis. CoPs exist in many forms, some large in scale that deal with complex problems, others small in scale that focus on a problem at a very specific level. For more information on communities of practice, see: *www.tadnet.org/pages/510*.

describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables and any empirical support for this framework.

(4) Be based on current research and make use of practices that are promising or supported by evidence.

To meet this requirement, the applicant must describe—

(i) How the current research about adult learning principles and implementation science will inform the proposed TA; and

(ii) How the proposed project will incorporate current research and practices that are promising or supported by evidence in the development and delivery of its products and services.

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe its proposed activities to identify or develop the knowledge base for practices that are promising or supported by evidence in experiential learning for novice interpreters.

(6) Develop products and implement services to maximize the project's efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes; and

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration.

(c) In the narrative section of the application under "Quality of the Evaluation Plan," include an evaluation plan for the project. To address this requirement, the applicant must describe—

(1) Evaluation methodologies, including instruments, data collection methods, and analyses that will be used to evaluate the project. Any proposed instruments must be valid and reliable, and the applicant must submit rationale to support the use of each instrument;

(2) Measures of progress in implementation, including the extent to which the project's activities and products have reached their target populations; intended outcomes or results of the project's activities in order to evaluate those activities; and how well the goals and objectives of the proposed project, as described in its logic model,[4] have been met;

(3) How the evaluation plan will be implemented and revised, as needed, during the project. The applicant must designate at least one individual with sufficient dedicated time, experience in evaluation, and knowledge of the project to support the design and implementation of the evaluation. Tasks may include, but are not limited to, coordinating with the advisory committee and RSA to revise the logic model to provide for a more comprehensive measurement of implementation and outcomes, to reflect any changes or clarifications to the logic model discussed at the kick-off meeting, and to revise the evaluation design and instrumentation proposed in the grant application consistent with the logic model (*e.g.*, developing quantitative or qualitative data collections that permit both the collection of progress data and the assessment of project outcomes);

(4) The standards and targets for determining effectiveness;

(5) How evaluation results will be used to examine the effectiveness of implementation and progress toward achieving the intended outcomes; and

(6) How the methods of evaluation will produce quantitative and qualitative data that demonstrate whether the project activities achieved their intended outcomes.

(d) Demonstrate, in the narrative section of the application under "Adequacy of Project Resources," how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have historically been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to provide experiential learning to novice interpreters and to achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits.

(e) Demonstrate, in the narrative section of the application under "Quality of the Management Plan," how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors allocated to the project and how these allocations are appropriate and adequate to achieve the project's intended outcomes, including an assurance that such personnel will have adequate availability to ensure timely communications with stakeholders and RSA;

(3) The proposed management plan will ensure that the products and services provided are of high quality; and

(4) The proposed project will benefit from a diversity of perspectives, including the advisory committee, as well as other relevant groups in its development and operation.

(f) Address the following application requirements. The applicant must—

(1) Include, in Appendix A, a logic model that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(2) Include, in Appendix A, a Memorandum of Understanding or a Letter of Intent between the lead applicant, members of the consortium, other proposed training and TA providers, and other relevant partners;

(3) Include, in Appendix A, a conceptual framework for the project;

(4) Include, in Appendix A, person-loading charts and timelines as applicable, to illustrate the management plan described in the narrative;

(5) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, after receipt of the award;

(ii) An annual planning meeting in Washington, DC, with the RSA project officer and other relevant RSA staff during each subsequent year of the project period; and

(iii) A one-day intensive review meeting in Washington, DC, during the third quarter of the third year of the project period.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

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[4] A logic model communicates how the project will achieve its intended outcomes and provides a framework for both the formative and summative evaluations of the project.

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

This final priority contains information collection requirements that are approved by OMB under the National Interpreter Education program 1820–0018; this final priority does not affect the currently approved data collection.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing this final priority only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Through this priority, experiential learning and TA will be provided to novice interpreters in order for them to achieve national certification. These activities will help interpreters to more effectively meet the communication needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind. The training ultimately will improve the quality of VR services and the competitive integrated employment outcomes achieved by individuals with disabilities. This priority will promote the efficient and effective use of Federal funds.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site, you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Portable Document Format

(PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 19, 2016.

Sue Swenson,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2016–17404 Filed 7–22–16; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2016–0105; FRL–9947–69–Region 9]

Limited Approval, Limited Disapproval of California Air Plan Revisions, Eastern Kern Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a limited approval and limited disapproval of revisions to the Eastern Kern Air Pollution Control District (EKAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compounds (VOC) emitted from motor vehicle and mobile equipment refinishing operations. Under the authority of the Clean Air Act (CAA or the Act), this action simultaneously approves a local rule that regulates these emission sources and directs California to correct rule deficiencies.

DATES: This rule will be effective on August 24, 2016.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2016–0105 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps, multi-volume reports), and some may not be available in either location (*e.g.,* confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Arnold Lazarus, EPA Region IX, (415) 972–3024, *lazarus.arnold@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to the EPA.

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I. Proposed Action

On April 15, 2016 (81 FR 22204), the EPA proposed a limited approval and limited disapproval of the following rule that was submitted for incorporation into the California SIP.

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Amended	Submitted
EKAPCD	410.4A	Motor Vehicle and Mobile Equipment Refinishing Operations	03/13/14	07/25/14

We proposed a limited approval because we determined that this rule improves the SIP and is largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with section 110 and part D of the Act. These provisions include the following:

- Paragraph VI(A), "VOC Content Limits," provides VOC limits for cavity wax, deadener, gasket/gasket sealing material, lubricating wax/compounds and trunk interior coatings. However, in conflict with long-standing guidance on enforceability such as discussed in the Bluebook, these terms are not defined in the rule.[1]

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period we received no comments.

III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is finalizing a limited approval of the submitted rule. This action incorporates the submitted rule into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3) and 301(a), the EPA is simultaneously finalizing a limited disapproval of the rule.

This final limited disapproval does not trigger sanctions or a federal implementation plan (FIP) clock. Sanctions will not be imposed under CAA 179(b) because the submittal of Rule 410.4A is discretionary (*i.e.,* not required to be included in the SIP), and EPA will not promulgate a FIP in this instance under CAA 110(c)(1) because the disapproval does not reveal a deficiency in the SIP for the area that such a FIP must correct. Specifically, there is no EPA control techniques guidelines (CTG) for Motor Vehicle and Mobile Equipment Refinishing Operations and, according to CARB's Facility Search Engine, there are no facilities that emit VOC in the EKAPCD for this category for the most recent database year of 2013. Accordingly, the failure of the EKAPCD to adopt revisions to Rule 410.4A would not adversely affect the SIP's compliance with the CAA's requirements, such as the requirements for section 182 ozone reasonably available control technology (RACT), reasonable further progress, and attainment demonstrations. Note that the submitted rule has been adopted by the EKAPCD and the EPA's final limited disapproval does not prevent the local agency from enforcing it. The limited disapproval also does not prevent any portion of the rule from being incorporated by reference into the federally enforceable SIP as discussed in a July 9, 1992 EPA memo found at: *http://www.epa.gov/nsr/ttnnsr01/gen/pdf/memo-s.pdf.*

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[1] *See* "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," (a.k.a., Bluebook) EPA OAQPS, May 25, 1988. P2–7.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the EKAPCD rule described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available electronically through *www.regulations.gov* and in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 23, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 3, 2016.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(231)(i)(B) (*9*) and (c)(447)(i)(D)(*5*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(231) * * *

(i) * * *

(B) * * *

(*9*) Previously approved on November 13, 1998 in paragraph (c)(231)(i)(B)(*4*) and now deleted with replacement in (c)(447)(i)(D)(*5*) Rule 410.4A amended on March 7, 1996.

* * * * *

(447) * * *

(i) * * *

(D) * * *

(*5*) Rule 410.4A, ''Motor Vehicle and Mobile Equipment Refinishing Operations,'' amended on March 13, 2014.

* * * * *

[FR Doc. 2016–17192 Filed 7–22–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2016–0347; FRL–9949–42–OAR]

Extension of Deadline for Action on the Section 126 Petition From Connecticut

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, the Environmental Protection Agency (EPA) is determining that 60 days is insufficient time to complete the technical and other analyses and public notice-and-comment process required for our review of a petition submitted by the state of Connecticut pursuant to section 126 of the Clean Air Act (CAA). The petition requests that the EPA make a finding that the Brunner Island Steam Electric Station located in York County, Pennsylvania, emits air pollution that significantly contributes to nonattainment and interferes with maintenance of the 2008 ozone national ambient air quality standards (NAAQS) in Connecticut. Under section 307(d)(10) of CAA, the EPA is authorized to grant a time extension for responding to the petition if the EPA determines that the extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of the section 307(d)'s notice-and-comment rulemaking requirements. By this action, the EPA is making that determination. The EPA is therefore extending the deadline for acting on the petition to no later than January 25, 2017.

DATES: This final rule is effective on July 25, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2016–0347. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Gobeail McKinley, Office of Air Quality Planning and Standards (C504–04), U.S. EPA, Research Triangle Park, North Carolina 27709, telephone number (919) 541–5246, email: *mckinley.gobeail@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Legal Requirements for Interstate Air Pollution

This is a procedural action to extend the deadline for the EPA to respond to a petition from the state of Connecticut filed pursuant to CAA section 126(b). The EPA received the petition on June 1, 2016. The petition requests that the EPA make a finding under section 126(b) of the CAA that the Brunner Island Steam Electric Station located in York County, Pennsylvania is operating in a manner that emits air pollutants in violation of the provisions of section 110(a)(2)(D)(i)(I) of the CAA with respect to the 2008 ozone NAAQS.

Section 126(b) of the CAA authorizes states to petition the EPA to find that a major source or group of stationary sources in upwind states emits or would emit any air pollutant in violation of the prohibition of CAA section 110(a)(2)(D)(i) [1] by contributing significantly to nonattainment or maintenance problems in downwind states. Section 110(a)(2)(D)(i)(I) of the CAA prohibits emissions of any air pollutant in amounts which will contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any NAAQS. The petition asserts that emissions from Brunner Island's three major boiler units are linked to downwind nonattainment and maintenance ozone receptor sites in Connecticut for the 2008 ozone NAAQS and that this impact would be mitigated by regulation of nitrogen oxide emissions at the plant or shutting down the plant.

Pursuant to CAA section 126(b), the EPA must make the finding requested in the petition, or must deny the petition, within 60 days of its receipt. Under CAA section 126(c), any existing sources for which the EPA makes the requested finding must cease operations within 3 months of the finding, except that the source may continue to operate if it complies with emission limitations and compliance schedules (containing increments of progress) that the EPA may provide to bring about compliance with the applicable requirements as expeditiously as practical but no later than 3 years from the date of the finding.

CAA section 126(b) further provides that the EPA must hold a public hearing on the petition. The EPA's action under section 126 is also subject to the procedural requirements of CAA section 307(d). *See* CAA section 307(d)(1)(N). One of these requirements is notice-and-comment rulemaking, under section 307(d)(3)–(6).

In addition, CAA section 307(d)(10) provides for a time extension, under certain circumstances, for a rulemaking subject to CAA section 307(d). Specifically, CAA section 307(d)(10) provides:

> Each statutory deadline for promulgation of rules to which this subsection applies which requires promulgation less than six months after date of proposal may be extended to not more than six months after date of proposal by the Administrator upon a determination that such extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of the subsection.

CAA section 307(d)(10) may be applied to section 126 rulemakings because the 60-day time limit under CAA section 126(b) necessarily limits the period for promulgation of a final rule after proposal to less than 6 months.

II. Final Rule

A. Rule

In accordance with CAA section 307(d)(10), the EPA is determining that the 60-day period afforded by CAA section 126(b) for responding to the petition from the state of Connecticut is not adequate to allow the public and the agency the opportunity to carry out the purposes of CAA section 307(d). Specifically, the 60-day period is insufficient for the EPA to complete the necessary technical review, develop an adequate proposal, and allow time for notice and comment, including an opportunity for public hearing, on a proposed finding regarding whether the Brunner Island Steam Electric Station identified in the CAA section 126 petition contributes significantly to nonattainment or interferes with maintenance of the 2008 ozone NAAQS in Connecticut. Moreover, the 60-day period is insufficient for the EPA to review and develop response to any public comments on a proposed finding, or testimony supplied at a public hearing, and to develop and promulgate a final finding in response to the petition. The EPA is in the process of determining an appropriate schedule for action on the CAA section 126 petition. This schedule must afford the EPA adequate time to prepare a proposal that clearly elucidates the issues to facilitate public comment, and must provide adequate time for the public to comment and for the EPA to review and develop responses to those comments prior to issuing the final rule. As a result of this extension, the deadline for the EPA to act on the petition is January 25, 2017.

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[1] The text of CAA section 126 codified in the United States Code cross references CAA section 110(a)(2)(D)(ii) instead of CAA section 110(a)(2)(D)(i). The courts have confirmed that this is a scrivener's error and the correct cross reference is to CAA section 110(a)(2)(D)(i). *See Appalachian Power Co.* v. *EPA, 249 F.3d 1032, 1040–44 (D.C. Cir. 2001).*

B. Notice and Comment Under the Administrative Procedures Act (APA)

This document is a final agency action, but may not be subject to the notice-and-comment requirements of the APA, 5 U.S.C. 553(b). The EPA believes that, because of the limited time provided to make a determination, the deadline for action on the CAA section 126 petition should be extended pursuant to section 307(d)(10) of CAA. Congress may not have intended a CAA section 307(d)(10) extension determination to be subject to notice-and-comment rulemaking. However, to the extent that this extension determination otherwise would require notice and opportunity for public comment, there is good cause within the meaning of 5 U.S.C. 553(b)(3)(B) not to apply those requirements here. Providing for notice and comment of this extension determination under section 307(d)(10) of CAA would be impracticable because of the limited time provided for making this determination, and would be contrary to the public interest because it would divert agency resources from the substantive review of the CAA section 126 petition.

C. Effective Date Under the APA

This action is effective on July 25, 2016. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if the agency has good cause to mandate an earlier effective date. This action—a deadline extension—must take effect immediately because its purpose is to extend by 6 months the deadline for action on the petition. As discussed earlier, the EPA intends to use the 6-month extension period to develop a proposal on the petition and provide time for public comment before issuing the final rule. It would not be possible for the EPA to complete the required notice and comment and public hearing process within the original 60-day period noted in the statute. These reasons support an immediate effective date.

III. Statutory and Executive Order Reviews

A. Executive Orders 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory

This action is exempt from review by the Office of Management and Budget because it simply extends the date for the EPA to take action on a petition.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This good cause final action simply extends the date for the EPA to take action on a petition and does not impose any new obligations or enforceable duties on any state, local or tribal governments or the private sector. It does not contain any recordkeeping or reporting requirements.

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the APA, 5 U.S.C. 553, or any other statute. This rule is not subject to notice-and-comment requirements because the agency has invoked the APA "good cause" exemption under 5 U.S.C. 553(b).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. This good cause final action simply extends the date for the EPA to take action on a petition. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This good cause final action simply extends the date for the EPA to take action on a petition and does not have any impact on human health or the environment.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice-and-comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule as discussed in Section II.B of this document, including the basis for that finding.

IV. Statutory Authority

The statutory authority for this action is provided by sections 110, 126 and 307 of the CAA as amended (42 U.S.C. 7410, 7426 and 7607).

V. Judicial Review

Under section 307(b)(1) of the CAA, judicial review of this final rule is available only by the filing of a petition for review in the U.S. Court of Appeals for the for the appropriate circuit by September 23, 2016. Under section 307(b)(2) of the CAA, the requirements that are the subject of this final rule may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practices and procedures, Air pollution control, Electric utilities, Incorporation by reference, Intergovernmental relations, Sulfur dioxide.

Dated: July 14, 2016.

Gina McCarthy,

Administrator.

[FR Doc. 2016–17412 Filed 7–22–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2014–0708; FRL–9949–47–Region 9]

Clean Data Determination for 1997 $PM_{2.5}$ Standards; California—South Coast; Applicability of Clean Air Act Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to determine that the South Coast air quality planning area in California has attained the 1997 annual and 24-hour fine particle ($PM_{2.5}$) National Ambient Air Quality Standards. This determination is based upon complete (or otherwise validated), quality-assured and certified ambient air monitoring data showing that the area has monitored attainment of the 1997 annual and 24-hour $PM_{2.5}$ NAAQS based on the 2011–2013 monitoring period, and that all complete data available since that time period indicate that the area continues to attain. Based on the above determination, the requirements for this area to submit certain state implementation plan (SIP) revisions related to attainment shall be suspended for so long as the area continues to attain the 1997 annual and 24-hour $PM_{2.5}$ standards.

DATES: This rule is effective on August 24, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2014–0708. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted materials, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, (415) 947–4192, or by email at *tax.wienke@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we", "us" or "our" are used, we mean the EPA.

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I. Summary of Proposed Action
II. Evaluation of 2014 and 2015 Data
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I. Summary of Proposed Action

On December 9, 2014 (79 FR 72999), the EPA proposed to determine that the Los Angeles-South Coast Air Basin ("South Coast") nonattainment area had attained the 1997 annual and 24-hour national ambient air quality standards (NAAQS or "standards") for fine particles (generally referring to particles less than or equal to 2.5 micrometers in diameter, $PM_{2.5}$)("1997 $PM_{2.5}$ NAAQS").[1] Herein, we refer to our December 9, 2014 proposed rule as the "proposed rule."

In our proposed rule, we explained that in making an attainment determination, the EPA generally relies on complete, quality-assured and certified data gathered at State and Local Air Monitoring Stations (SLAMS) and entered into the EPA's Air Quality System (AQS) database.[2] Under 40 CFR 50.7 ("National primary and secondary ambient air quality standards for $PM_{2.5}$") and appendix N to 40 CFR part 50 ("Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$"), the 1997 annual and 24-hour $PM_{2.5}$ NAAQS is met when each monitoring site in the area has a design value at or below the standard.[3] [4]

The EPA proposed the determination of attainment for the South Coast area based upon a review of the monitoring network operated by the South Coast Air Quality Management District (SCAQMD) and the data collected at the monitoring sites operating during the most recent three-year period from which data was available at the time of the proposed rule (*i.e.,* 2011 to 2013). Based on this review, the EPA found that complete (or otherwise validated), quality-assured and certified data for the South Coast showed that the annual and 24-hour design values for the 2011–2013 period were equal to or less than 15 micrograms per cubic meter (μ/m^3) and 65 μ/m^3, respectively, at all monitoring sites and that, therefore, the South Coast had attained the 1997 $PM_{2.5}$ NAAQS. See the data summary tables on pages 73003 and 73004 of our proposed rule.

In conjunction with and based upon our proposed determination that the South Coast had attained the standard, the EPA also proposed to determine that the obligation under the Clean Air Act (CAA or "Act") to submit any remaining attainment-related SIP revisions arising from classification of the South Coast as a Moderate nonattainment area under subpart 4 of part D (of title I of the Act) for the 1997 $PM_{2.5}$ NAAQS was not applicable for so long as the area continues to attain the 1997 $PM_{2.5}$ NAAQS. These attainment-related requirements include, but are not limited to, the part D, subpart 4 obligations to provide an attainment demonstration pursuant to section 189(a)(1)(B), the reasonably available control measures (RACM) provisions of section 189(a)(1)(C) and the reasonable further progress (RFP) provisions of section 189(c). In so doing, we proposed to apply the EPA's Clean Data Policy to the 1997 $PM_{2.5}$ NAAQS to suspend the attainment-related SIP submittal obligations under subpart 4 of part D (of title I of the CAA), since the South Coast nonattainment area is considered a "Moderate" nonattainment area under subpart 4. See page 73005 of our proposed rule. In proposing to apply the Clean Data Policy to the 1997 $PM_{2.5}$ NAAQS, we explained that we are applying the same statutory interpretation with respect to the implications of clean data determinations that the Agency has long applied in regulations for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS and in individual rulemakings for the 1-hour ozone, coarse particle (PM_{10}) and lead NAAQS.

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[1] The South Coast includes Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County (see 40 CFR 81.305).

[2] AQS is EPA's repository for ambient air quality data. Data completeness requirements for a given year are met when at least 75 percent of the scheduled sampling days for each quarter have valid data.

[3] The annual $PM_{2.5}$ standard design value is the 3-year average of annual mean concentration, and the 1997 annual $PM_{2.5}$ NAAQS is met when the annual standard design value at each eligible monitoring site is less than or equal to 15.0 $\mu g/m^3$. In 2012, we established a more stringent annual $PM_{2.5}$ NAAQS of 12.0 $\mu g/m^3$, 78 FR 3086 (January 15, 2013) ("2012 $PM_{2.5}$ NAAQS"), but the 1997 annual $PM_{2.5}$ NAAQS remains in effect.

[4] The 24-hour $PM_{2.5}$ standard design value is the 3-year average of annual 98th percentile 24-hour average values recorded at each eligible monitoring site, and the 1997 24-hour $PM_{2.5}$ NAAQS is met when the 24-hour standard design value at each monitoring site is less than or equal to 65 $\mu g/m^3$. In 2006, we established a more stringent 24-hour $PM_{2.5}$ NAAQS of 35 $\mu g/m^3$, 71 FR 61144 (October 17, 2006) ("2006 $PM_{2.5}$ NAAQS"), but the 1997 24-hour $PM_{2.5}$ NAAQS remains in effect.

Please see the proposed rule for more detailed information concerning the $PM_{2.5}$ NAAQS, designations of $PM_{2.5}$ nonattainment areas, the regulatory basis for determining attainment of the NAAQS, the SCAQMD's $PM_{2.5}$ monitoring network, the EPA's review and evaluation of the data and the rationale and implications for application of the Clean Data Policy to the 1997 $PM_{2.5}$ NAAQS.

II. Evaluation of 2014 and 2015 Data

We noted in our proposed rule that, at that time, AQS included no $PM_{2.5}$ data for year 2014 for the South Coast, but that several quarters of preliminary data were expected to be uploaded to AQS prior to the EPA's final action. See page 73003 of the proposed rule. We also indicated that we would review the preliminary 2014 data prior to taking final action to ensure that 2014 data are consistent with the determination of attainment. In the paragraphs that follow, before we discuss the data for 2014 and 2015, we discuss changes to the SCAQMD $PM_{2.5}$ ambient monitoring network and the EPA's determination regarding eligibility of data from certain collocated monitors for comparison to the NAAQS.

At the time of our proposed rule, the $PM_{2.5}$ monitoring network in the South Coast consisted of 18 SLAMS. Monitoring networks frequently change over time in response to changing circumstances, requirements and needs. Since our proposed rule, the SCAQMD has discontinued monitoring at three sites (Burbank, Riverside (Magnolia) and Ontario (Fire Station)) and has established near-road $PM_{2.5}$ monitoring sites along Route 710 in Long Beach and along Route 60 in Ontario.[5] During at least portions of 2014 and 2015, SCAQMD operated collocated filter-based Federal Reference Method (FRM) and Federal Equivalent Method (FEM) Beta Attenuation Method (BAM) samplers at seven sites: Anaheim, Burbank, Central Los Angeles, North Long Beach, South Long Beach, Rubidoux and Mira Loma.

With respect to the discontinued sites, SCAQMD has requested approval from the EPA to suspend monitoring at the Burbank and Riverside (Magnolia) sites until suitable replacement sites can be located.[6] SCAQMD is not planning to replace the Ontario (Fire Station) site but rather to consolidate measurements from that site with nearby sites and thus has requested approval from the EPA to discontinue, rather than suspend, monitoring at the Ontario (Fire Station) site. The EPA has not taken action on the requests due to insufficient information, but is working with the SCAQMD to provide the basis to resolve the requests by including sufficient information in SCAQMD's upcoming 2016 Annual Air Quality Monitoring Network Plan (due for submittal to the EPA in July 2016). None of the three discontinued sites (Burbank, Riverside (Magnolia) and Ontario (Fire Station)) was ever the design value site in the South Coast for $PM_{2.5}$, and given that the determination of attainment is based on the concentrations measured at the design value site, the fact that the EPA has not yet approved the relocation or closure of the three monitoring sites does not preclude taking final action on the attainment determination.

With respect to the two newly-established near-road $PM_{2.5}$ monitoring sites, the EPA has approved the sites and has determined that, with the addition of the near-road sites, the SCAQMD network of $PM_{2.5}$ monitoring sites continues to meet the minimum requirements of our monitoring regulations even in the absence of the three discontinued sites.[7]

With respect to the eligibility of data from collocated monitors for comparison with the NAAQS, our regulations provide that monitoring agencies must assess data from $PM_{2.5}$ FEM monitors using certain performance criteria where the data are identified as not of sufficient comparability to a collocated FRM, and the monitoring agency requests that the FEM data should not be used for comparison to the NAAQS.[8] As described on page 73003 of the proposed rule, the SCAQMD requested that the 2011–2013 data from the collocated $PM_{2.5}$ FEM monitors at seven monitoring sites in the $PM_{2.5}$ monitoring network be considered not eligible for comparison to the NAAQS as part of its 2014 Annual Air Quality Monitoring Network Plan. The EPA approved the request by letter dated September 9, 2014. Similarly, as part of the 2015 Annual Air Quality Monitoring Network Plan, the SCAQMD submitted an ineligibility determination request for data from collocated FEM monitors over the 2012–2014 period, and on May 2, 2016, the EPA approved that request.[9] Both determinations were made based on assessments of the data showing that bias in the FEM data (relative to collocated FRM data) exceeded EPA's performance criteria for acceptable slope and intercept as defined in 40 CFR 58.11(e).

In the South Coast, SCAQMD has designated the $PM_{2.5}$ FRM samplers as the primary monitors where FRM and FEM monitors are collocated at a given site. Under our regulations, comparisons with the $PM_{2.5}$ NAAQS are made on a site-level, not a monitor-level basis, and the default dataset for a site is based on the designated primary monitor's recorded concentrations.[10] Collocated monitors may be used to augment the default dataset to fill in data gaps; however, collocated monitor data are ineligible for this purpose if the EPA has approved a request from a district to approve a determination that such data are ineligible for NAAQS comparison purposes. In this instance, the EPA has approved such ineligibility requests for collocated $PM_{2.5}$ FEM monitoring data for both the 2011–2013 and 2012–2014 periods.

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[5] See SCAQMD, Annual Air Quality Monitoring Network Plan, July 2015, pages 16 and 17. SCAQMD submitted the 2015 network plan to the EPA on July 1, 2015. See letter from Rene M. Bermudez, Principal Air Quality Instrument Specialist, SCAQMD, to Meredith Kurpius, Ph.D., EPA Region IX, July 1, 2015.

[6] *Id.*, at appendix D, pages 1 and 2.

[7] See letter and enclosures from Gretchen Busterud, Acting Deputy Director, Air Division, EPA Region IX, to Matt Miyasato, Deputy Executive Officer, Science and Technology Advancement, SCAQMD, dated October 29, 2015.

[8] 40 CFR 58.11(e).

[9] See letter from Meredith Kurpius, Manager, Air Quality Analysis Office, Air Division, EPA Region IX, to Jason Low, Ph.D., South Coast Air Quality Management District, dated May 2, 2016.

[10] 40 CFR part 50, appendix N, section 3.0(d).

With respect to the data, all four quarters for 2014 and 2015 have now been uploaded, and the SCAQMD has certified that 2014 and 2015 data are quality-assured.[11] As part of the 2014 and 2015 data review process, we reviewed raw data reports for SCAQMD monitoring sites. With respect to 2014 data, we noted that significant portions of the 2014 data had been flagged with a number of Quality Assurance (QA) qualifier flags. Specifically, portions of the 2014 data in quarters one, two, three and four were flagged with "QX" (does not meet QC criteria) and portions of data in quarter four were flagged with "1" (deviation from a CFR/critical criteria requirement).[12] An in-depth review of the data revealed that the "1" and "QX" flags were associated with deviations from the criteria in 40 CFR part 50 appendix L, sections 8.3.6 and 8.3.5, respectively. Some of the QA issues during 2014 stem from arrangements made by SCAQMD in anticipation of the agency's temporary closure of its weighing room to allow for an upgrade to that facility and in response to construction delays associated with that project. The SCAQMD's weighing room reopened on December 4, 2014, and the QA issues affecting 2014 data did not affect data collected in 2015.

The requirements in 40 CFR part 50, appendix L, section 8.3.6 state that post-sample conditioning and weighing shall not exceed 30 days. This refers to the amount of time between when the sample is collected and when the sample is post-weighed. This is commonly referred to as the "post-sample hold time requirement" and, per EPA guidance ("QA Handbook"), is considered a "critical criteria".[13] Adherence to this requirement is important because loss of mass is possible with excessive post-sample hold times, which would likely bias data low.

As described in section 17.3.3 and appendix D of the QA Handbook, for $PM_{2.5}$, critical criteria are the specific requirements in 40 CFR 50 appendix L and 40 CFR 58 appendix A that have been deemed critical to maintaining the integrity of a sample or group of samples. The QA handbook further explains that observations that do not meet each and every criterion on the Critical Criteria Table should be invalidated unless there are compelling reasons and justification for not doing so. Since a portion of the 2014 data in quarter four has not met a critical criterion, as defined by the QA Handbook, SCAQMD has invalidated these data. Therefore these data will not be considered as valid data for the purposes of this action.[14] Given the extent of invalidated data, the dataset for quarter four of 2014 is incomplete from all of the monitoring sites, resulting in an incomplete year for 2014.

Unlike the data for 2014, however, the data collected during 2015 are complete (or nearly complete) for all four quarters from all monitors.[15] For 2015, the basin-wide high-site annual average and (98th percentile) 24-hour-average $PM_{2.5}$ concentrations are 14.5 $\mu g/m^3$ and 43 $\mu g/m^3$, respectively, based on complete or nearly complete datasets for 2015. During 2015, the high site for the annual average was the near-road Ontario (Route 60) site, and the high site for the 98th percentile 24-hour concentration was the Mira Loma site. Because the concentrations fall below the relevant NAAQS (15.0 $\mu g/m^3$, annual average and 65 $\mu g/m^3$, 24-hour average), they are consistent with the 2011–2013 data upon which the determination of attainment is based.

Lastly, we find further support for the conclusion that the South Coast has attained the 1997 $PM_{2.5}$ standard in a review of the long-term trends in $PM_{2.5}$ concentrations in the South Coast as summarized below in Table 1.

TABLE 1—SOUTH COAST BASIN-WIDE HIGH ANNUAL AND 24-HOUR $PM_{2.5}$ CONCENTRATIONS, 2001–2015

Year	Annual average ($\mu g/m^3$) [a]	98th Percentile 24-hour average ($\mu g/m^3$) [b]
2001	31.0	74
2002	27.5	66
2003	24.8	77
2004	22.1	72
2005	20.9	58
2006	20.8	54
2007	20.9	71
2008	18.3	47
2009	17.2	43
2010	15.2	36
2011	15.3	37
2012	15.1	36
2013	14.1	38
2014	....	....

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[11] For the letter of certification of 2014 data, see the letter from Matt M. Miyasato, Ph.D., Deputy Executive Officer, Science and Technology Advancement, SCAQMD, to Jared Blumenfeld, Regional Administrator, EPA Region IX, dated May 1, 2015. For the letter of certification of 2015 data, see the letter from Laki Tisopulos, Ph.D., P.E., Assistant Deputy Executive Officer, Science and Technology Advancement, SCAQMD, to Deborah Jordan, Air Division Director, EPA Region IX, April 29, 2016.

[12] See 2014 Raw Data Report (AMP 350, April 14, 2016, SouthCoast_$PM_{2.5}$_RawDataReport_2014.pdf).

[13] See EPA's Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, May, 2013 (EPA–454/B–13–003).

[14] On May 5, 2016, SCAQMD replaced the data code "1" with the null data code "AR" (lab error) for post-sample hold time requirement noncompliant data and therefore removed the data from the regulatory data record. See 2014 Raw Data Report (AMP 350), May 5, 2016. SouthCoast_$PM_{2.5}$_RawDataReport_PostSample_Removed.pdf.

[15] The data from all quarters of 2015 from all of the monitoring sites are complete (*i.e.,* 75 percent or greater sampling days with valid data) except for: (1) Quarter one at the Long Beach—Route 710 near-road monitor (AQS ID #06–037–4008) during which 74 percent of sampling days have valid data; and (2) quarter four at the Anaheim monitor (AQS ID # 06–059–0007) during which 43 percent of sampling days have valid data. The Long Beach—Route 710 near-road monitor began operating in 2015. The Anaheim monitor has been operating for many years but has never been the design value site within the South Coast.

TABLE 1—SOUTH COAST BASIN-WIDE HIGH ANNUAL AND 24-HOUR $PM_{2.5}$ CONCENTRATIONS, 2001–2015—Continued

Year	Annual average (µg/m³) [a]	98th Percentile 24-hour average (µg/m³) [b]
2015	14.5	43

[a] Basin-wide high annual-average concentration is from the Rubidoux site for 2001–2005, the Mira Loma site from 2006–2013, and the Ontario (Route 60) site for 2015. **Bold** values represent exceedances of the applicable 1997 standard.

[b] Basin-wide high 98th percentile 24-hour average concentration is from the Rubidoux site for 2001–2003, 2005, and 2006; the San Bernardino site for 2004 and 2007; the Mira Loma site for 2008, 2010, 2011, 2013, and 2015; the Azusa site for 2009; and the Fontana site for 2012. **Bold** values represent exceedances of the applicable 1997 standard.

Source: AQS Design Value Reports, dated October 6, 2014, October 7, 2014, and May 5, 2016.

As shown in Table 1, basin-wide high-site $PM_{2.5}$ concentrations in the South Coast declined rapidly from 2001 to 2009. In more recent years, the decline has been more gradual and has even started to level out; however, the level reached in recent years are below the 1997 $PM_{2.5}$ NAAQS of (less than or equal to) 15.0 µg/m³ (annual average) and 65 µg/m³ (98th percentile 24-hour average). We have concluded that South Coast attained the 1997 $PM_{2.5}$ standard by the end of 2013, and this conclusion is supported by the data collected during 2015 and the long-term trend data of $PM_{2.5}$ concentrations in the South Coast that show signs of leveling out at a level consistent with attainment of that standard.

III. Public Comments and the EPA's Responses

The EPA's proposed rule provided a 30-day public comment period. Upon request, we extended the comment period 14 days, from January 8th to January 22nd, 2015.[16] We received one set of comments on our proposed rule, a letter from Earthjustice on behalf of a group that Earthjustice refers to collectively as "Health Advocates".[17] We summarize the comments from Health Advocates and respond to them below.

Comment #1: Health Advocates assert that 2014 monitoring data demonstrate that the South Coast is not attaining the 1997 $PM_{2.5}$ standards, and because the South Coast is not attaining the standard, suspension of attainment-related SIP submittal requirements, as proposed by the EPA, is inappropriate.

In support of their assertion, Health Advocates present annual average $PM_{2.5}$ data for six monitoring sites in the South Coast for year 2014 downloaded from the California Air Resources Board's (CARB's) Air Quality and Meteorological Information System (AQMIS) Web site (*http://www.arb.ca.gov/aqmis2/aqmis2.php*). Specifically, Health Advocates present the following data downloaded from AQMIS:

Monitoring site	2014 Annual mean (µg/m³)
Central Los Angeles—Los Angeles (Main Street)	18.8
Metropolitan Riverside County—Rubidoux	15.6
Riverside—Magnolia	16.3
Mira Loma—Mira Loma (Van Buren)	19.2
Burbank—W Palm Ave	19.8
San Bernardino—Upland	17.9

Lastly, Health Advocates assert that, in light of 2014 data showing violations of the 1997 $PM_{2.5}$ standard, the EPA must reclassify the South Coast as a "Serious" nonattainment area under CAA section 188(b)(2) and require the South Coast to prepare a "Serious" area plan.

Response to Comment #1: We note that Health Advocates do not challenge our evaluation of South Coast $PM_{2.5}$ data for 2011–2013, our proposed determination that the design values in the South Coast for that period are less than the 1997 $PM_{2.5}$ standards or our proposed suspension of any remaining SIP submittal requirements for the 1997 $PM_{2.5}$ standards. Rather, Health Advocates assert that data for 2014 made available since publication of our proposed rule precludes our final determination of attainment because the 2014 data purportedly shows that the South Coast is not currently attaining the 1997 $PM_{2.5}$ standards. We disagree.

First, CARB's AQMIS combines preliminary (real-time) data with official (historical) data. By their nature, preliminary data are subject to change and may be subject to adjustment, substitution or exclusion under applicable monitoring regulations. In this instance, the annual average $PM_{2.5}$ concentrations cited by Health Advocates at four of the monitoring sites (Central Los Angeles, Rubidoux, Mira Loma and Burbank) reflect data collected by continuous $PM_{2.5}$ FEM monitors for which the SCAQMD has requested an ineligibility determination (*i.e.,* for comparison to the NAAQS), and because the EPA has approved the SCAQMD's request, the continuous $PM_{2.5}$ FEM data are excluded from NAAQS attainment determinations. With respect to the annual average $PM_{2.5}$ concentrations cited by Health Advocates at the two other monitoring sites (Riverside (Magnolia) and Upland), the data reflect non-FEM methods and are therefore not eligible for comparison with the $PM_{2.5}$ NAAQS.[18]

Second, as discussed in detail in section II of this document, a review of the only complete, quality-assured data available after the 2011–2013 period, that is, the 2015 $PM_{2.5}$ ambient data collected in the South Coast, supports EPA's determination that the area is attaining the NAAQS. As a result, our suspension of attainment-related SIP submittal requirements is appropriate, and reclassification of the area to "Serious" for the 1997 $PM_{2.5}$ standards is not warranted.

Lastly, with respect to reclassification of the South Coast to Serious, we note that the EPA has reclassified the South Coast from Moderate to Serious for the more stringent 2006 (24-hour) $PM_{2.5}$ NAAQS. See 81 FR 1514 (January 13, 2016). As a result of that action, California is required to submit, by August 14, 2017, additional SIP revisions to satisfy the statutory requirements that apply to Serious PM$_{2.5}$ nonattainment areas, including the requirements of subpart 4 of part D, title I of the Act. The Serious area plan must provide for attainment of the 2006 PM$_{2.5}$ NAAQS in the South Coast as expeditiously as practicable, but no later than December 31, 2019, in accordance with the requirements of part D of title I of the Act.

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[16] See 80 FR 449 (January 6, 2015).

[17] See letter, Elizabeth Forsyth, Earthjustice, and Maya Golden-Krasner, Communities for a Better Environment, to Wienke Tax, EPA Region IX, dated January 22, 2015. Earthjustice submitted the comments on our proposed rule on behalf of Communities for a Better Environment, Sierra Club, Center for Biological Diversity, WildEarth Guardians, Medical Advocates for Healthy Air, and Physicians for Social Responsibility—Los Angeles. Earthjustice's letter included four attachments: (1) EPA's technical support document and response to comments document for action on the 2007 South Coast Air Quality Management Plan; (2) comments on the 2011 Air Monitoring Network Plan for the South Coast Air Quality Management District; (3) a draft report prepared by Greg Gould, "Near Roadway Emissions: Measures, Exposure, and Monitoring;" and a report prepared by E.H. Pechan & Associations, Inc., "Estimating Contributions of On-Road Emissions to Near Highway $PM_{2.5}$ Concentrations."

[18] Under 40 CFR 50.7(a)(1), the 1997 $PM_{2.5}$ NAAQS are defined in terms of ambient air measurements made by FRMs or FEMs.

Moreover, notwithstanding the suspension of attainment-related SIP requirements related to the *1997* PM$_{2.5}$ NAAQS arising from today's action, California must continue to develop such plans not just for the more stringent *2006* (24-hour) PM$_{2.5}$ NAAQS cited above, but also for the more stringent *2012* (annual average) PM$_{2.5}$ NAAQS for which the South Coast has been classified as Moderate nonattainment effective April 15, 2015. See 80 FR 2206 (January 15, 2015). The new South Coast plan addressing Moderate area requirements for the 2012 PM$_{2.5}$ NAAQS is due no later than October 15, 2016. See CAA section 189(a)(2)(B).

Comment #2: Health Advocates contend that the EPA cannot make a clean data determination for the 1997 PM$_{2.5}$ standards in the South Coast because the data the EPA considered for its proposed determination exclude data from near-roadway monitors. In support of their contention, Health Advocates cite CAA section 107(a), which requires states to assure air quality within the entire geographic area and note that Congress did not exempt areas near highways, where evidence cited by the commenters indicates much higher levels of PM$_{2.5}$ within 300 meters of the highway. Thus, they assert that the inclusion of near-roadway monitoring data is necessary to protect the people who live, work and go to school within 300 meters of a highway in the South Coast and cite changes in the EPA's monitoring regulations that require near-roadway monitoring in certain urban areas.

Health Advocates also cite a case pending in the Ninth Circuit Court of Appeals in which community and environmental groups are challenging the EPA's approval of the attainment demonstration for the 1997 PM$_{2.5}$ standards in the South Coast, in part, on the grounds that the attainment demonstration does not address the near-highway environment. Health Advocates contend that the EPA should not make a clean data determination before the court has ruled on this issue.[19]

Response to Comment #2: CAA section 107(a) provides that each state shall have the primary responsibility for assuring air quality within the entire geographic area comprising such state by submitting a SIP that will specify the manner in which the NAAQS will be achieved and maintained in such state. CAA section 107(a) does not specify how the EPA must determine whether an area within a state has attained the NAAQS. Such determinations are governed by the applicable sections of 40 CFR parts 50, 53 and 58, and in the proposed rule at page 73001, the EPA identifies the specific regulations governing our proposed determination of attainment for the South Coast for the 1997 PM$_{2.5}$ standards.

Health Advocates cite changes made by the EPA to the Agency's monitoring regulations to require states to establish near-road PM$_{2.5}$ monitors in certain urban areas as support for their assertion that the EPA's proposed determination of attainment for the South Coast in essence denies thousands of people who live near highways from the protections of the Clean Air Act. We agree that the EPA's monitoring regulations have been revised to require near-road PM$_{2.5}$ monitoring in Core-Based Statistical Areas (CBSAs) having one million or greater persons. See 40 CFR part 58, appendix D, section 4.7.1(b), as added by the EPA's final action published at 78 FR 3086, at 3282 (January 15, 2013).

The South Coast encompasses two such areas, the Los Angeles-Long Beach-Anaheim, CA CBSA and the Riverside-San Bernardino, CA CBSA. Given that both CBSAs exceed 2.5 million people, the first PM$_{2.5}$ monitors specifically located to measure the near-road environment were required to be operational as of January 1, 2015. In response to the revised monitoring requirements, beginning January 1, 2015, the SCAQMD began monitoring ambient PM$_{2.5}$ concentrations at two near-road sites: the Long Beach Route 710 site (AQS ID 06–037–4008) is located near Route 710 in Long Beach, and the Ontario Route 60 Near-Road site (06–071–0027) is located near Route 60 in Ontario. We now have one year's worth of data from the two near-road PM$_{2.5}$ monitors.[20] At the Long Beach Route 710 site, the annual average PM$_{2.5}$ concentration was 12.9 μ/m^3 during 2015, and the 98th percentile 24-hour PM$_{2.5}$ concentration was 36 μ/m^3. At the Ontario Route 60 site, the corresponding concentrations were 14.5 μ/m^3 and 40 μ/m^3, respectively. In summary, the ambient concentrations were less than the corresponding 1997 PM$_{2.5}$ NAAQS and are consistent with continued attainment of the 1997 PM$_{2.5}$ NAAQS in the South Coast.

Also, as noted in our proposed rule, the EPA's evaluation of whether the South Coast PM$_{2.5}$ nonattainment area has attained the 1997 annual and 24-hour PM$_{2.5}$ NAAQS is based in part on our review of the adequacy of the PM$_{2.5}$ monitoring network in the nonattainment area and the reliability of the data collected by the network. During the relevant time period in which the data that we relied upon for the proposed determination of attainment were collected (*i.e.,* 2011–2013), the PM$_{2.5}$ monitoring network in the South Coast was not required to include near-road PM$_{2.5}$ monitors. Therefore, the lack of a near-road PM$_{2.5}$ monitor during the 2011–2013 period does not undermine our determination of attainment of the standard based on the data collected during those years. Moreover, as noted above, the near-road ambient PM$_{2.5}$ data that are now available are consistent with continued attainment of the 1997 PM$_{2.5}$ NAAQS in the South Coast.

Lastly, Health Advocates are correct that a lawsuit was filed in the Ninth Circuit Court of Appeals, in which near-road PM$_{2.5}$ concentrations were at issue. See *Physicians for Social Responsibility—Los Angeles* v. *EPA,* Ninth Circuit, No. 12–70079. However, the action that is challenged in that case is the EPA's approval of the attainment demonstration for the 1997 PM$_{2.5}$ standards in the South Coast that relies on modeling results to predict future ambient concentrations. Today's action does not rely on future *modeled* concentrations but rather on past *monitored* concentrations collected by a monitoring network that, as explained above, is adequate and consistent with the EPA's monitoring requirements for the relevant period.

In any event, on June 9, 2015, the court issued a memorandum denying the petition for review in the *Physicians for Social Responsibility* case. As relevant here, the court held that the South Coast PM$_{2.5}$ plan does not impermissibly ignore pollution in the near-highway areas because the monitoring guidelines explicitly specify that states generally need not monitor "microscale" or "middle scale" areas, which include "traffic corridors" and areas "along traffic corridors." See

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[19] The case cited is *Physicians for Social Responsibility—Los Angeles* v. *EPA,* 9th Cir., No. 12–70079.

[20] See AQS Design Value Report, dated May 5, 2016.

Physicians for Social Responsibility—Los Angeles v. *EPA,* No. 12–70079, memorandum opinion at 3 (9th Cir., June 9, 2015). Thus, the case presents no reason to delay final action on the determination of attainment for the South Coast for the 1997 $PM_{2.5}$ standards.

IV. Final Action

For the reasons stated above, the EPA is taking final action to determine that the South Coast nonattainment area in California has attained the 1997 annual and 24-hour $PM_{2.5}$ NAAQS based on complete (or otherwise validated), quality-assured and certified data in AQS for 2011–2013. We also find that the most recent quality-assured and certified data in AQS show that this area continues to attain the standards.

In conjunction with and based upon our final determination that the South Coast has attained and is currently attaining the standard, the EPA is taking final action to determine that the obligation to submit any remaining attainment-related SIP revisions arising from classification of the South Coast as a Moderate nonattainment area under subpart 4 of part D (of title I of the Act) for the 1997 $PM_{2.5}$ NAAQS is not applicable for so long as the area continues to attain the 1997 $PM_{2.5}$ NAAQS. These attainment-related requirements include, but are not limited to, the part D, subpart 4 obligations to provide an attainment demonstration pursuant to section 189(a)(1)(B), the RACM provisions of section 189(a)(1)(C) and the RFP provisions of section 189(c).

Today's final action does not constitute a redesignation of the South Coast nonattainment area to attainment for the 1997 annual and 24-hour $PM_{2.5}$ NAAQS under CAA section 107(d)(3) because we have not yet approved a maintenance plan for the South Coast as meeting the requirements of section 175A of the CAA or determined that the area has met the other CAA requirements for redesignation. The classification and designation status in 40 CFR part 81 remains Moderate nonattainment for this area until such time as the EPA determines that California has met the CAA requirements for redesignating the South Coast nonattainment area to attainment.

If the South Coast nonattainment area continues to monitor attainment of the 1997 $PM_{2.5}$ NAAQS, the requirements for the area to submit an attainment demonstration and associated RACM, an RFP plan, contingency measures and any other planning requirements related to attainment of the 1997 $PM_{2.5}$ NAAQS will remain suspended. If, after today's action, the EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the area has violated the 1997 $PM_{2.5}$ NAAQS, the basis for the suspension of the attainment planning requirements for the area would no longer exist, and the area would thereafter have to address such requirements.

V. Statutory and Executive Order Reviews

This final action makes a determination of attainment based on air quality and suspends certain federal requirements, and thus, this action would not impose additional requirements beyond those imposed by state law. For this reason, the final action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this final action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP obligations discussed herein do not apply to Indian Tribes, and thus this action will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that, before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 23, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 8, 2016.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.247 is amended by adding paragraph (g) to read as follows:

§ 52.247 Control strategy and regulations: Fine Particle Matter.

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(g) *Determination of Attainment:* Effective August 24, 2016, the EPA has determined that, based on 2011 to 2013 ambient air quality data, the South Coast $PM_{2.5}$ nonattainment area has attained the 1997 annual and 24-hour $PM_{2.5}$ NAAQS. This determination suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures and other planning SIPs related to attainment for as long as this area continues to attain the 1997 annual and 24-hour $PM_{2.5}$ NAAQS. If the EPA determines, after notice-and-comment rulemaking, that this area no longer meets the 1997 $PM_{2.5}$ NAAQS, the corresponding determination of attainment for the area shall be withdrawn.

[FR Doc. 2016–17410 Filed 7–22–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2011–0817; FRL–9949–46–OAR]

RIN 2060–AS98

National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to amend the National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry. This direct final rule provides, for a period of 1 year, an additional compliance alternative for sources that would otherwise be required to use an HCl CEMS to demonstrate compliance with the HCl emissions limit. This compliance alternative is needed due to the current unavailability of a calibration gas used for quality assurance purposes. This direct final rule also restores regulatory text requiring the reporting of clinker production and kiln feed rates that was deleted inadvertently.

DATES: This rule is effective on September 8, 2016 without further notice, unless the EPA receives significant adverse comment by August 24, 2016. If the EPA receives significant adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0817, to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, Cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Nizich, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–2825; fax number: (919) 541–5450; and email address: *nizich.sharon@epa.gov.*

SUPPLEMENTARY INFORMATION:

Organization of This Document. The information in this preamble is organized as follows:

I. General Information
  A. Why is the EPA using a direct final rule?
  B. Does this direct final rule apply to me?
  C. What should I consider as I prepare my comments for the EPA?
II. What are the amendments made by this direct final rule?
III. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
  B. Paperwork Reduction Act (PRA)
  C. Regulatory Flexibility Act (RFA)
  D. Unfunded Mandates Reform Act (UMRA)
  E. Executive Order 13132: Federalism
  F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  I. National Technology Transfer and Advancement Act (NTTAA)
  J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
  K. Congressional Review Act (CRA)

I. General Information

A. Why is the EPA using a direct final rule?

The EPA is publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and do not anticipate significant adverse comment. However, in the "Proposed Rules" section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to amend the National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry, if EPA receives significant adverse comments on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If the EPA receives significant adverse comment on all or a distinct portion of this direct final rule, we will publish a timely withdrawal in the **Federal Register** informing the public that some or all of this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

B. Does this direct final rule apply to me?

Categories and entities potentially regulated by this direct final rule include:

Category	NAICS Code[1]
Portland cement manufacturing facilities	327310

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this direct final rule. To determine whether your facility is affected, you should examine the applicability criteria in 40 CFR 63.1340. If you have questions regarding the applicability of any aspect of this action to a particular entity, consult either the air permitting authority for the entity or your EPA Regional representative as listed in 40 CFR 63.13.

C. What should I consider as I prepare my comments for the EPA?

Do not submit information containing CBI to the EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, a copy of the comments that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2011–0817.

II. What are the amendments made by this direct final rule?

In response to a concern raised by a stakeholder regarding the availability of calibration gases for HCl continuous monitoring compliance, this direct final rule amends 40 CFR 63.1349(b)(6) of the performance testing requirements for HCl by adding an alternative method for performance testing. Under the current rule, the owner or operator of a kiln subject to the emission limits for HCl in 40 CFR 63.1343 may demonstrate compliance by one of the following methods:

- An owner or operator of a kiln may demonstrate compliance by operating a continuous emissions monitoring system (CEMS) meeting the requirements of performance specification 15 (PS–15), PS–18, or any other PS for HCl CEMS in appendix B to part 60, with compliance based on a 30-kiln operating day rolling average.
- If the kiln is controlled using a wet scrubber, tray tower, or dry scrubber, the owner or operator, as an alternative to using a CEMS, may demonstrate compliance with the HCl limit using one of two options, described below.

Under both options, a performance test must be conducted by the owner or operator using Method 321. Under the first option, while conducting the Method 321 performance test (note Method 321 is the HCl stack testing performance method required by this rule), the owner or operator simultaneously measures a control device parameter and establishes a site-specific parameter limit that will be continuously monitored to determine compliance. If the kiln is controlled using a wet scrubber or tray tower, the owner or operator would monitor the pressure drop across the scrubber and/or liquid flow rate and pH during the HCl performance test. If the kiln is controlled using a dry scrubber, the sorbent injection rate would be monitored during the performance test. Under the second option, the owner or operator may establish sulfur dioxide (SO_2) as the operating parameter by measuring SO_2 emissions using a CEMS simultaneously with the Method 321 test and establishing the site-specific SO_2 limit that will be continuously monitored to determine compliance with the HCl limit.

The current rule requires that if a source chooses to monitor HCl emissions using a CEMS, they must do so in accordance with PS–15, PS–18, or any other PS for HCl CEMS in appendix B to part 60 of this chapter. (See 40 CFR part 60 appendix B.) Quality assurance procedures for HCl CEMS require that they be capable of reading HCl concentrations that span a range of possible emission levels below as well as above expected HCl emission concentrations. These quality assurance procedures require the use of National Institute of Standards and Technology (NIST)-traceable calibration gases for HCl.

Following our decision to create PS–18 and Procedure 6 for HCl continuous monitoring in 2012, the EPA worked with NIST and commercial gas vendors on development of NIST-traceable HCl gas standards to support the PS–18 and Portland Cement Maximum Achievable Control Technology (MACT) rulemaking. While some of the low HCl concentration (<10 parts per million, or ppm) NIST-traceable gases have been available on a limited basis since 2013, the full range of HCl concentrations required to support all HCl emissions monitoring technologies (including integrated path that requires concentrations 100 times higher) are not widely available at this time.

The approach used by NIST in 2013 was to certify the Research Gas Material (RGM) cylinders as primary gas standards. These cylinders contain HCl gas and are provided to NIST by vendors for NIST certification, and subsequently used by the vendors as transfer standards to prepare the Gas Manufacturer Intermediate Standards (GMIS). The GMIS cylinders are then used to produce NIST-traceable gas cylinders that are sold commercially.[1] The initial approach used by NIST to certify the RGM cylinders was not viable in the long term as the instrumentation used by NIST largely depleted the HCl RGM gas volume, leaving little gas in the cylinder for the vendors to use in preparing GMIS materials. Because of this concern, NIST initiated development of an improved RGM certification procedure. The development of both the initial and more recently improved approach has been hampered by the challenges presented in handling HCl gas. HCl gas is extremely reactive and difficult to handle in both gas cylinders and analytically. As such, it has taken considerable time for NIST to optimize the new analytical equipment and approach to achieve the necessary uncertainty requirements (*e.g.,* <1 percent uncertainty).

In addition, the commercial establishment of NIST-traceable gases is dependent on collaboration between NIST and the specialty gas vendors. There are a limited number of vendors providing the stable, accurate, low and high concentration cylinder gases to NIST to certify as RGMs. NIST is now receiving a regular supply of candidate RGM cylinders from these vendors and is beginning work on higher concentration HCl gas standards needed to support integrated path HCl monitors (IP–CEMS). Once the RGMs are available, the specialty gas vendors must complete a series of procedures to establish the certainty of their products which adds to the time to achieve wide commercial availability.

As a result, the EPA is providing, for a period of 1 year, an additional compliance alternative for sources that would otherwise be required to use an HCl CEMS. In this alternative, the HCl CEMS is still required to be installed and operated, but actual compliance with the HCl emissions limit is determined by a three run stack test. The HCl CEMS will still provide a continuous readout of HCl emissions, but because the CEMS will not be calibrated with the required NIST-traceable calibration gases, the HCl measurement is not considered to be sufficiently accurate on an absolute basis for compliance, but would be sufficient to indicate any relative change in HCl emissions occurring subsequent to the compliance test. Therefore, the HCl CEMS under this alternative would function as a continuous parameter monitor system (CPMS) as in the case of the particulate matter (PM) CPMS requirement (see 78 FR 10014–10015, 10019–10020, February 12, 2013). Based on conversations with gas vendors and NIST, we anticipate that NIST-traceable calibration gases for HCl will be available in sufficient quantities within one year of this notice (see J. Ryan, memo to S. Johnson, Docket ID No. EPA–HQ–OAR–2011–0817, *Status of NIST-Traceable Hydrogen Chloride (HCl) Calibration Gases for Use With HCl Continuous Emissions Monitoring Systems (CEMS) Under 40 CFR part 63, subpart LLL, June 22, 2016*). Thus, this alternative will expire on July 25, 2017 and owner/operators must have in place one of the original HCl compliance demonstration alternatives (we anticipate HCl CEMS operated monitoring equipment according to 40 CFR 63.1350(l)) by this date.

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[1] *EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards,* U.S. Environmental Protection Agency Office of Research and Development, EPA/600/R–12/531, May 2012.

Under this new, temporary alternative, the owner or operator would demonstrate initial compliance by conducting a performance test using Method 321 and would monitor compliance with an operating parameter limit through use of an HCl CPMS. For the HCl CPMS, the owner operator would use the average HCl CPMS indicated output, typically displayed as parts per million volume, wet basis HCl recorded at in-stack oxygen concentration during the HCl performance test to establish the operating limit. To determine continuous compliance with the operating limit, the owner or operator would record the indicated HCl CPMS output data for all periods when the process is operating and use all the HCl CPMS data, except data obtained during times of monitor malfunctions. Thus, continuous compliance with the operating limit would be demonstrated by using all valid hourly average data collected by the HCl CPMS for all operating hours to calculate the arithmetic average operating parameter in units of the operating limit (indicated ppm) on a 30-kiln operating day rolling average basis, updated at the end of each new kiln operating day. An exceedance of the kiln 30-day operating limit would trigger evaluation of the control system operation and resetting the operating limit based on a new correlation with performance testing. For kilns with inline raw mills, performance testing and monitoring HCl to establish the site specific operating limit must be conducted during both raw mill on and raw mill off conditions.

As is the case for the PM CPMS requirements (see 40 CFR 63.1349(b)(1)(i)), this alternative includes a scaling factor of 75 percent of the emission standard as a benchmark (2.25 parts per million volume, dry basis @ 7-percent oxygen). Sources that choose this option will conduct a Method 321 test to determine compliance with the HCl emissions standard and during this testing will also monitor their HCl CPMS output in indicated ppm to determine where their HCl CPMS output would intersect 75 percent of their allowed HCl emissions, and set their operating level at that ppm output. This scaling procedure alleviates re-testing concerns for sources that operate well below the emission limit and provides greater operational flexibility while assuring continuous compliance with the HCl emission standard. For sources whose Method 321 compliance tests place them at or above 75 percent of the emission standard, their operating limit is determined by the average of three Method 321 test runs (for sources with no inline raw mill) or the time weighted average of six Method 321 test runs (for kilns with inline raw mills). We believe that by adopting a scaling factor as well as the use of 30 days of averaged HCl CPMS measurements, the parametric limit in no way imposes a stringency level higher than the level of the HCl emissions standard and will avoid triggering unnecessary retests for many facilities, especially for the lower-emitting sources.

In addition to adding the interim testing and monitoring provisions for HCl, we are restoring a recordkeeping regulatory provision that was deleted inadvertently during one of the recent rule revisions. The provision in question is the former 40 CFR 63.1355(e). This provision relates to the recordkeeping requirements for clinker production and kiln feed rates. This requirement was added in the 2010 final amendments and was not removed or revised in subsequent amendments to the rule. This rulemaking restores this provision in the regulatory text to ensure that the regulated community has a clear understanding of the applicable compliance requirements.

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulation (40 CFR part 63, subpart RRR) and has assigned OMB control number 2060–0416. This action does not change the information collection requirements.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action does not create any new requirements or burdens and no costs are associated with this direct final action.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. It will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. The EPA is aware of one tribally owned Portland cement facility currently subject to 40 CFR part 63, subpart LLL that will be subject to this direct final rule. However, the provisions of this direct final rule are not expected to impose new or substantial direct compliance costs on Tribal governments since the provisions in this direct final rule are adding an alternative to the HCl monitoring provisions, adding an option which provides operational flexibility. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This action does not affect the level of protection provided to human health or the environment.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 14, 2016.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency is amending title 40, chapter I, part 63 of the Code of Federal Regulations (CFR) as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart LLL—National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry

■ 2. Section 63.1349 is amended by adding paragraph (b)(6)(v) to read as follows:

§ 63.1349 Performance testing requirements.

* * * * *

(b) * * *

(6) * * *

(v) As an alternative to paragraph (b)(6)(ii) of this section, the owner or operator may demonstrate initial compliance by conducting a performance test using Method 321 of appendix A to this part. You must also monitor continuous performance through use of an HCl CPMS according to paragraphs (b)(6)(v)(A) through (H) of this section. For kilns with inline raw mills, compliance testing and monitoring HCl to establish the site specific operating limit must be conducted during both raw mill on and raw mill off conditions.

(A) For your HCl CPMS, you must establish a 30 kiln operating day site-specific operating limit. If your HCl performance test demonstrates your HCl emission levels to be less than 75 percent of your emission limit (2.25 ppmvd @7% O_2), you must use the time weighted average HCl CPMS indicated value recorded during the HCl compliance test (typically measured as ppmvw HCl at stack O_2 concentration, but a dry, oxygen corrected value would also suffice), your HCl instrument zero output value, and the time weighted average HCl result of your compliance test to establish your operating limit. If your HCl compliance test demonstrates your HCl emission levels to be at or above 75 percent of your emission limit (2.25 ppmvd @7% O_2), you must use the time weighted average HCl CPMS indicated value recorded during the HCl compliance test as your operating limit. You must use the HCl CPMS indicated signal data to demonstrate continuous compliance with your operating limit.

(*1*) Your HCl CPMS must provide a ppm HCl concentration output and the establishment of its relationship to manual reference method measurements must be determined in units of indicated ppm. The instrument signal may be in ppmvw or ppmvd and the signal may be a measurement of HCl at in-stack concentration or a corrected oxygen concentration. Once the relationship between the indicated output of the HCl CPMS and the reference method test results is established, the HCl CPMS instrument measurement basis (ppmvw or ppmvd, or oxygen correction basis) must not be altered. Likewise, any setting that impacts the HCl CPMS indicated HCl response must remain fixed after the site-specific operating limit is set.

(*2*) Your HCl CPMS operating range must be capable of reading HCl concentrations from zero to a level equivalent to 125 percent of the highest expected value during mill off operation. If your HCl CPMS is an auto-ranging instrument capable of multiple scales, the primary range of the instrument must be capable of reading an indicated HCl concentration from zero to 10 ppm.

(*3*) During the initial performance test of a kiln with an inline raw mill, or any such subsequent performance test that demonstrates compliance with the HCl limit, record and average the indicated ppm HCl output values from the HCl CPMS for each of the six periods corresponding to the compliance test runs (*e.g.,* average each of your HCl CPMS output values for six corresponding Method 321 test runs). With the average values of the six test runs, calculate the average of the three mill on test runs and the average of the three mill off test runs. Calculate the time weighted result using the average of the three mill on tests and the average of the three mill off tests and the previous annual ratio of mill on/mill off operations. Kilns without an inline raw mill will conduct three compliance tests and calculate the average monitor output values corresponding to these three test runs and not use time weighted values to determine their site specific operating limit.

(B) Determine your operating limit as specified in paragraphs (b)(6)(i) or (iii) of this section. If your HCl performance test demonstrates your HCl emission levels to be below 75 percent of your emission limit, kilns with inline raw mills will use the time weighted average indicated HCl ppm concentration CPMS value recorded during the HCl compliance test, the zero value output from your HCl CPMS, and the time weighted average HCl result of your compliance test to establish your operating limit. Kilns without inline raw mills will not use a time weighted average value to establish their operating limit. If your time weighted HCl compliance test demonstrates your HCl emission levels to be at or above 75 percent of your emission limit, you will use the time weighted HCl CPMS indicated ppm value recorded during the HCl compliance test to establish your operating limit. Kilns without inline raw mills will not use time weighted compliance test results to make this determination. You must verify an existing operating limit or establish a new operating limit for each kiln, after each repeated performance test.

(C) If the average of your three Method 321 compliance test runs (for kilns without an inline raw mill) or the time weighted average of your six Method 321 compliance test runs (for an kiln with an inline raw mill) is below 75 percent of your HCl emission limit, you must calculate an operating limit by establishing a relationship of the average HCl CPMS indicated ppm to the Method 321 test average HCl concentration using the HCl CPMS instrument zero, the average HCl CPMS indicated values corresponding to the three (for kilns without inline raw mills) or time weighted HCl CPMS indicated values corresponding to the six (for kilns with inline raw mills) compliance test runs, and the average HCl concentration (for kilns without raw mills) or average time weighted HCl concentration (for kilns with inline raw mills) from the Method 321 compliance test with the procedures in paragraphs (b)(6)(v)(C)(*1*) through (*5*) of this section.

(*1*) Determine your HCl CPMS instrument zero output with one of the following procedures:

(*i*) Zero point data for in situ instruments should be obtained by removing the instrument from the stack and monitoring ambient air on a test bench.

(*ii*) If neither of the steps in paragraphs (b)(6)(v)(C)(*1*)(*i*) through (*ii*) of this section are possible, you must use a zero output value provided by the manufacturer.

(*2*) If your facility does not have an inline raw mill you will determine your HCl CPMS indicated average in HCl ppm, and the average of your corresponding three HCl compliance test runs, using equation 11a.

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} X_i , \bar{y} = \frac{1}{n}\sum_{i=1}^{n} Y_i \qquad \text{(Eq. 11a)}$$

Where:

X_i = The HCl CPMS data points for the three (or six) runs constituting the performance test;

Y_i = The HCl concentration value for the three (or six) runs constituting the performance test; and

n = The number of data points.

(*3*) You will determine your HCl CPMS indicated average in HCl ppm, and the average of your corresponding HCl compliance test runs, using equation 11b. If you have an inline raw mill, use this same equation to calculate a second three-test average for your mill off CPMS and compliance test data.

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} X_i , \bar{y} = \frac{1}{n}\sum_{i=1}^{n} Y_i \qquad \text{(Eq. 11b)}$$

Where:

X_i = The HCl CPMS data points for the three runs constituting the mill on OR mill off performance test;

Y_i = The HCl concentration value for the three runs constituting the mill on OR mill off performance test; and

n = The number of data points.

(*4*) With your instrument zero expressed in ppm, your average HCl CPMS ppm value, and your HCl compliance test average, determine a relationship of performance test HCl (as ppmvd @7% O_2) concentration per HCl CPMS indicated ppm with Equation 11c.

$$R = \frac{Y_1}{(X_1 - z)} \qquad \text{(Eq. 11c)}$$

Where:

R = The relative performance test concentration per indicated ppm for your HCl CPMS;

Y_1 = The average HCl concentration as ppmvd @7% O_2 during the performance test;

X_1 = The average indicated ppm output from your HCl CPMS; and

z = The ppm of your instrument zero determined from paragraph (b)(6)(v)(C)(*1*) of this section.

(*5*) Determine your source specific 30 kiln operating day operating limit using HC1 CPMS indicated value from Equation 11c in Equation 11d, below. This sets your operating limit at the HC1 CPMS output value corresponding to 75 percent of your emission limit.

$$O_1 = z + \frac{0.75\,(L)}{R} \qquad \text{(Eq. 11d)}$$

Where:

O_l = The operating limit for your HCl CPMS on a 30 kiln operating day average, as indicated ppm;
L = 3 ppmvd @7% O_2;
z = Your instrument zero, determined from paragraph (b)(6)(v)(C)(*1*) of this section ; and
R = The relative performance test concentration per indicated ppm for your HCl CPMS, from Equation 11c.

(D) If the average of your HCl compliance test runs is at or above 75 percent of your HCl emission limit (2.25 ppmvd@7% O_2) you must determine your operating limit by averaging the HCl CPMS output corresponding to your HCl performance test runs that demonstrate compliance with the emission limit using Equation 11e.

$$O_h = \frac{1}{n}\sum_{i=1}^{n} X_i \qquad \text{(Eq. 11e)}$$

Where:

O_h = Your site specific HCl CPMS operating limit, in indicated ppm.
X_i = The HCl CPMS data points for all runs i.
n = The number of data points.

(E) To determine continuous compliance with the operating limit, you must record the HCl CPMS indicated output data for all periods when the process is operating and use all the HCl CPMS data for calculations when the source is not out of control. You must demonstrate continuous compliance with the operating limit by using all quality-assured hourly average data collected by the HCl CPMS for all operating hours to calculate the arithmetic average operating parameter in units of the operating limit (ppmvw) on a 30 kiln operating day rolling average basis, updated at the end of each new kiln operating day. Use Equation 11f to determine the 30 kiln operating day average.

$$30\,\textit{kiln operating day parameter average} = \frac{\sum_{i=1}^{n} Hpv_i}{n} \qquad \text{(Eq. 11f)}$$

Where:

30 kiln operating day parameter average = The average indicated value for the CPMS parameter over the previous 30 days of kiln operation;
Hpv_i = The hourly parameter value for hour i; and
n = The number of valid hourly parameter values collected over 30 kiln operating days.

(F) If you exceed the 30 kiln operating day operating limit, you must evaluate the control system operation and re-set the operating limit.

(G) The owner or operator of a kiln with an inline raw mill and subject to limitations on HCl emissions must demonstrate initial compliance by conducting separate performance tests while the raw mill is on and while the raw mill is off. Using the fraction of time the raw mill is on calculate your HCl CPMS limit as a weighted average of the HCl CPMS indicated values measured during raw mill on and raw mill off compliance testing using Equation 11g.

$$R = (b * t) + (a * (1 - t)) \qquad \text{(Eq. 11g)}$$

Where:

R = HCl CPMS operating limit;
b = Average indicated HCl CPMS value during mill on operations, ppm;
t = Fraction of operating time with mill on;
a = Average indicated HCl CPMS value during mill off operations ppm; and
(1 − t) = Fraction of operating time with mill off.

(H) Paragraph (b)(6)(v) of this section expires on July 25, 2017 at which time the owner or operator must demonstrate compliance with paragraphs (b)(6)(i), (ii), or (iii).

* * * * *

■ 3. Section 63.1350 is amended by adding paragraph (l)(4) to read as follows:

§ 63.1350 Monitoring requirements.

* * * * *

(l) * * *

(4) If you monitor continuous performance through the use of an HCl CPMS according to paragraphs (b)(6)(v)(A) through (H) of § 63.1349, for any exceedance of the 30 kiln operating day HCl CPMS average value from the established operating limit, you must:

(i) Within 48 hours of the exceedance, visually inspect the APCD;

(ii) If inspection of the APCD identifies the cause of the exceedance, take corrective action as soon as possible and return the HCl CPMS measurement to within the established value; and

(iii) Within 30 days of the exceedance or at the time of the annual compliance test, whichever comes first, conduct an HCl emissions compliance test to determine compliance with the HCl emissions limit and to verify or reestablish the HCl CPMS operating limit within 45 days. You are not required to conduct additional testing for any exceedances that occur between the time of the original exceedance and the HCl emissions compliance test required under this paragraph.

(iv) HCl CPMS exceedances leading to more than four required performance tests in a 12-month process operating period (rolling monthly) constitute a presumptive violation of this subpart.

* * * * *

■ 4. Section 63.1355 is amended by adding paragraph (e) to read as follows:

§ 63.1355 Recordkeeping requirements.

* * * * *

(e) You must keep records of the daily clinker production rates and kiln feed rates.

* * * * *

[FR Doc. 2016–17293 Filed 7–22–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 5

[ET Docket Nos. 10–236 and 06–155; FCC 16–86]

Radio Experimentation and Market Trials—Streamlining Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission modifies its rules to permit program experimental radio licensees (program licensees) to experiment with radio frequency (RF)-based medical devices on certain restricted frequencies, if the medical device being tested is designed to comply with applicable Commission service rules. Adoption of this proposal facilitates access to spectrum that can be used under an experimental program license to improve the utility of this type of licensing scheme for those entities experimenting with RF-based medical devices, and thereby help to advance innovation in this area. This action will result in no harm to any qualified license applicant or licensee.

DATES: Effective August 24, 2016.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, 202–418–2452, *Rodney.Small@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order, ET Docket No. 10–236 and 06–155, FCC 16–86, adopted June 29, 2016, and released June 30, 2016. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *https://apps.fcc.gov/edocs_public/Query.do?numberFld=16-86&numberFld2=&docket=&dateFld=&docTitleDesc.*

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13.

Synopsis

1. In 2013, the Commission established in the *Report and Order* in this proceeding, 78 FR 25137, April 29, 2013, three new kinds of experimental licenses—including program licenses—designed to benefit the development of new technologies and expedite their introduction to the marketplace. In this Second Report and Order, the Commission adopts the proposal set forth in the *Further NPRM,* 80 FR 52437, August 31, 2015, by modifying section 5.303 of its rules for program licenses to permit experimentation in the restricted frequency bands for medical devices that comply with the service rules in Part 18 (Industrial, Scientific, and Medical Equipment), Part 95 Subpart H (Wireless Medical Telemetry Service), or Part 95 Subpart I (Medical Device Radiocommunication Service). This rule change will establish parity between all qualified medical device manufacturers and developers—whether they are health care institutions or medical device manufacturers—as to permissible frequencies of operation for conducting basic research and clinical trials with RF-based medical devices. Accordingly, because the Commission finds that the proposal will serve the public interest by promoting medical innovation with no detriment to the public, it adopts that proposal. Revised section 5.303 of the rules is set forth at the end of this summary.

Regulatory Flexibility Certification

2. The Regulatory Flexibility Act (RFA)[1] requires that agencies prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."[2] Modification of section 5.303 of the Commission's Rules establishes parity between all qualified medical device manufacturers as to permissible frequencies of operation for conducting basic research and clinical trials with RF-based medical devices. The Commission previously determined that "[t]he entities affected by the proposed rule change are equipment manufacturers seeking to test medical equipment designed to operate in the restricted frequency bands listed in section 15.205(a) of the rules, and such manufacturers are limited in number," and certified that the proposed rules would not have a significant economic impact on a substantial number of small entities. The Commission received no comments that addressed this determination or that claimed that the proposal requires additional RFA analysis. The Commission therefore certifies that the rule revisions set forth herein will not have a significant economic impact on a substantial number of small entities.

Congressional Review Act

3. The Commission will send a copy of this Second Report and Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

4. Accordingly, IT IS ORDERED, that, pursuant to sections 301 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 301 and 303, and §§ 1.1 and 1.425 of the Commission's rules, 47 CFR 1.1, 1.425, this Second Report and Order IS ADOPTED.

5. IT IS FURTHER ORDERED that part 5 of the Commission's rules, 47 CFR part 5, IS AMENDED, as set forth in the Rule Changes. These revisions will be effective August 24, 2016.

6. IT IS FURTHER ORDERED that, if no applications for review are timely filed, this proceeding SHALL BE TERMINATED and the docket CLOSED.

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[1] *See* 5 U.S.C. 604. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] 5 U.S.C. 605(b).

List of Subjects in 47 CFR Part 5

Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons set forth in the preamble the Federal Communications Commission amends 47 CFR part 5 as follows:

PART 5—EXPERIMENTAL RADIO SERVICE

■ 1. The authority citation for part 5 continues to read as follows:

Authority: Secs. 4, 302, 303, 307, 336 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 302, 303, 307, 336. Interpret or apply sec. 301, 48 Stat. 1081, as amended; 47 U.S.C. 301.

■ 2. Section 5.303 is revised to read as follows:

§ 5.303 Frequencies.

(a) Licensees may operate in any frequency band, including those above 38.6 GHz, except for frequency bands exclusively allocated to the passive services (including the radio astronomy service). In addition, licensees may not use any frequency or frequency band below 38.6 GHz that is listed in § 15.205(a) of this chapter.

(b) Exception: Licensees may use frequencies listed in § 15.205(a) of this chapter for testing medical devices (as defined in § 5.402(b) of this chapter), if the device is designed to comply with all applicable service rules in part 18; part 95, subpart H; or part 95, subpart I of this chapter.

[FR Doc. 2016–17319 Filed 7–22–16; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 81, No. 142
Monday, July 25, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2016–7055; Airspace Docket No. 15–AWP–11]

RIN 2120–AA66

Proposed Establishment of Restricted Area R–2306F; Yuma Proving Ground, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish restricted area R–2306F in the vicinity of Laguna Army Airfield at Yuma Proving Ground, AZ. The proposed restricted area would allow the Department of the Army to maximize the existing fixed infrastructure to support hazardous test programs and segregate these activities from non-participating aircraft at Yuma Proving Ground (YPG). These programs include ground and airborne testing of non-eye-safe lasers, high energy radars and the development of unproven weapons systems. The restricted airspace would ensure the safe testing and evaluation of these programs without impacting non-participating aircraft and the general public.

DATES: Comments must be received on or before September 8, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1 (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2016–7055 and Airspace Docket No. 15–AWP–11, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* Comments on environmental and land use aspects should be directed to: Meg McDonald, Environmental Sciences Division, U.S. Army Garrison-Yuma, Yuma, Arizona 85365–9498. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Docket Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1 (800) 647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, part A, subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish a restricted area at Yuma, AZ, to enhance aviation safety and accommodate essential Army testing requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2016–7055 and Airspace Docket No. 15–AWP–11) and be submitted in triplicate to the Docket Office at the address listed above. You may also submit comments through the Internet at *www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2016–7055 and Airspace Docket No. 15–AWP–11." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *www.regulations.gov.*

You may review the public docket containing the proposal, any comments received and any final disposition in person at the Docket Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Western Service Center, Federal Aviation Administration, 1601 Lind Ave. SW., Renton, WA 98057.

Background

Yuma Proving Ground (YPG) is a Major Range and Test Facility Base that conducts the development and testing of emerging aviation weapon technologies. This testing includes both ground and air-to-ground propagation of non-eye-safe lasers, high power radars and developmental, unproven weapons systems. Testing includes the actual operation of these systems using various proven and unproven aircraft platforms. Due to the hazards of these systems, it is imperative that these activities be segregated within a restricted area. To safely and efficiently test and evaluate these technologies, YPG needs to use the existing airspace and ground infrastructure at Laguna Army Airfield. Use of the Airfield is limited to "official business only" with "prior permission required." Therefore, hazardous testing could be conducted safely within proposed R–2306F without impacting non-participating aircraft.

The Proposal

The FAA is proposing an amendment to 14 CFR part 73 to establish a new restricted area, R–2306F, extending from the surface to 1,700 feet MSL, in the vicinity of Laguna Army Airfield at Yuma Proving Ground, AZ. The proposed area would be used for the testing of various hazardous systems including non-eye-safe lasers, high energy radars and the development of experimental weapons. Testing would include the operation of these systems from various aircraft platforms. Restricted airspace is required to effectively test these complex integrated systems without posing a hazard to non-participating aircraft and/or ground personnel. Proposed R–2306F would be completely contained over YPG-owned land. No supersonic flights would be conducted within the proposed airspace.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subjected to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.23 Arizona [Amended]

■ 2. § 73.23 is amended as follows:

*   *   *   *   *

R–2306F, Yuma West, AZ [New]

Boundaries. Beginning at lat. 32° 51′ 52″ N., long. 114° 26′ 52″ W.; to lat. 32° 52′ 30″ N., long. 114° 21′ 03″ W.; to lat. 32° 51′ 15″ N., long. 114° 21′ 03″ W.; to lat. 32° 51′ 18″ N., long. 114° 19′ 29″ W.; then clockwise along a 3.5 NM arc centered at lat. 32° 51′ 52″ N., long. 114° 23′ 34″ W.; to lat. 32° 49′ 30″ N., long. 114° 26′ 39″ W.; to lat. 32° 49′ 51″ N., long. 114° 26′ 38″ W.; to lat. 32° 50′ 08″ N., long. 114° 26′ 33″ W.; to lat. 32° 50′ 17″ N., long. 114° 26′ 19″ W.; to lat. 32° 50′ 31″ N., long. 114° 26′ 17″ W.; to lat. 32° 50′ 42″ N., long. 114° 26′ 29″ W.; to lat. 32° 51′ 11″ N., long. 114° 26′ 34″ W.; to the point of beginning

Designated altitudes. Surface to 1,700 feet MSL.

Time of designation. Intermittent, 0600–1800 local time, Monday–Saturday; other times by NOTAM.

Controlling agency. Yuma Approach Control, MCAS Yuma, AZ.

Using agency. U.S., Army, Commanding Officer, Yuma Proving Ground, Yuma, AZ.

*   *   *   *   *

Issued in Washington, DC, on July 19, 2016.

Leslie M. Swann,

Acting Manager, Airspace Policy Group.

[FR Doc. 2016–17558 Filed 7–22–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Chapter I

[Docket Number 160526465–6618–02]

Proposed 2020 Census Residence Criteria and Residence Situations; Extension of Comment Period

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Proposed Criteria; Extension of Comment Period.

SUMMARY: The Bureau of the Census (Census Bureau) is issuing this document to extend the comment period on the Proposed 2020 Census Residence Criteria and Residence Situations, which was published in the **Federal Register** on June 30, 2016. The comment period for the proposed criteria, which would have ended on August 1, 2016, is now extended until September 1, 2016.

DATES: Comments on the proposed criteria published on June 30, 2016 (81 FR 42577), must be received by September 1, 2016.

ADDRESSES: Direct all written comments regarding the Proposed 2020 Census Residence Criteria and Residence Situations to Karen Humes, Chief, Population Division, U.S. Census Bureau, Room 6H174, Washington, DC 20233; or Email [*POP.2020.Residence.Rule@census.gov*].

FOR FURTHER INFORMATION CONTACT: Population and Housing Programs Branch, U.S. Census Bureau, 6H185, Washington, DC 20233, telephone (301) 763–2381; or Email [*POP.2020.Residence.Rule@census.gov*].

SUPPLEMENTARY INFORMATION:

Background

The U.S. Census Bureau is committed to counting every person in the 2020 Census once, only once, and in the right place. The fundamental reason that the decennial census is conducted is to fulfill the Constitutional requirement (Article I, Section 2) to apportion the seats in the U.S. House of Representatives among the states. Thus, for a fair and equitable apportionment, it is crucial that the Census Bureau counts everyone in the right place during the decennial census.

The residence criteria are used to determine where people are counted during each decennial census. For more information on the Proposed 2020 Census Residence Criteria and Residence Situations (also referred to as the proposed "2020 Census Residence Rule and Residence Situations" in the text of the earlier document), please see the original document of proposed criteria and request for comment published in the **Federal Register** on June 30, 2016 (81 FR 42577).

Because of the scope of the proposed criteria, and in response to individuals and organizations who have requested more time to review the proposed criteria, the Census Bureau has decided to extend the comment period for an additional 31 days. This document announces the extension of the public comment period to September 1, 2016.

Dated: July 19, 2016.

Nancy A. Potok,

Deputy Director, Bureau of the Census.

[FR Doc. 2016–17484 Filed 7–22–16; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 578

[Docket No. FR–5476–N–04]

RIN 2506–AC29

Continuum of Care Program: Solicitation of Comment on Continuum of Care Formula

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice; request for comments.

SUMMARY: On July 31, 2012, HUD published an interim rule, for public comment, entitled ''Homeless Emergency Assistance and Rapid Transition to Housing: Continuum of Care Program,'' a program designed to address the critical problem of homelessness through a coordinated community-based process of identifying needs and building a system of housing and services to address those needs. HUD received 551 public comments on the interim rule. Approximately 42 of the public comments addressed the Continuum of Care formula, with the majority of these commenters seeking changes to the formula. With the interim rule now in place for 3 years, HUD seeks additional comment on the Continuum of Care formula.

Comment Due Date: September 23, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, 451 7th Street SW., Room 10276, Department of Housing and Urban Development, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the document.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–7000; telephone number 202–708–4300 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Continuum of Care (CoC) Interim Rule

On July 31, 2012, at 77 FR 45422, HUD published in the **Federal Register** an interim rule to implement the CoC authorized amendments to the McKinney-Vento Homeless Assistance Act in the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act). The purpose of the CoC program is to promote communitywide commitment to the goal of ending homelessness; provide funding for efforts by nonprofit providers, and State and local governments to quickly rehouse homeless individuals and families while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness; promote access to and effective utilization of mainstream programs by homeless individuals and families; and optimize self-sufficiency among individuals and families experiencing homelessness.

Section 427 of the McKinney Vento Act, as amended by the HEARTH Act, directs the Secretary to establish, by regulation, a funding formula that is based upon factors that are appropriate to allocate funds to meet the goals and objectives of the CoC program. As part of the interim rule, HUD codified the formula for establishing a CoC's Preliminary Pro Rata Need (PPRN formula) that had been used for many years prior to the interim rule to establish a CoC's PPRN. The PPRN formula is a combination of the formula used to award Emergency Solutions Grants (ESG) Program grant funds and Community Development Block Grant (CBDG) funds. Under the current PPRN formula, after a .2 percent set-aside for U.S. territories and insular areas, 75 percent of the total CoC allocation is distributed to ESG entitlement communities, generally comprised of large metropolitan cities and urban counties where homelessness is more concentrated, according to the CDBG formula. The remaining 25 percent of the CoC allocation is distributed to ESG non-entitlement communities according to the CDBG formula. Within this framework, the current CDBG formula is structured as a ''dual formula'' system. As set forth below, Formula A allocates funds to communities based on the following weighted factors: population, poverty, and overcrowding. Formula B assigns a different weighting scheme to an alternative menu of factors: population growth lag,[1] poverty, and pre-1940s housing.[2] Specifically, the existing CDBG formulas [3] are weighted as follows.

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[1] Population growth lag identifies slower growing communities or communities experiencing population loss as potential indicators of communities in decline and in need of development assistance.

[2] The share of housing units built before 1940 reflects the age of a community's housing stock, a potential indicator of blight.

[3] For non-entitlement communities, Formula B uses population instead of population growth lag.

Formula A	Formula B
25% * population	20% * population growth lag.
50% * poverty	30% * poverty.
25% * overcrowding ..	50% * pre-1940 housing.

Pursuant to this dual formula system, HUD calculates the funding amounts for each jurisdiction under both Formulas A and B and assigns the larger of the two grant calculations, less a pro rata reduction to ensure the total amount allocated is within the amount appropriated for funding.

Section 427 of the McKinney Vento Act, as amended by the HEARTH Act also allows HUD to adjust a CoC's formula to ensure that the formula amount is sufficient to renew existing projects in each CoC for one year, which is known as the Annual Renewal Demand (ARD). In the FY 2015 Continuum of Care Program NOFA, and in several previous Continuum of Care Program NOFAs, the amount of funding that CoCs were eligible to receive was based primarily on their ARD and the PPRN formula had little impact on the amount they were eligible to apply for. Only for a minority of CoCs that had a PPRN that was larger than their ARD did the PPRN formula affect funding, and in these cases, it only affected the amount available for new projects. The PPRN formula would only have a more significant impact on CoC funding if the amount of funding available for the CoC program nationally is significantly larger than the amount needed to renew existing projects for one year.

Several stakeholders indicated that the existing PPRN formula was not representative of the number of individuals and families experiencing homelessness in their geographic area. Therefore, the interim rule specifically sought comment on the PPRN formula and the process for determining a CoC's maximum award amount. HUD solicited public comment through November 16, 2012 and of the 551 public comments that HUD received, approximately 42 public comments were directed to the PPRN formula. The majority of the comments on the PPRN formula were from western States, counties, and cities, and indicated that the CDBG formula was not the appropriate basis for the PPRN formula because the CDBG formula utilizes urban blight, as reflected in the age of housing stock, and population growth lag factors to allocate funds, which may measure community development needs generally, but are not specifically tailored to measure homelessness. Other commenters stated that they opposed reductions in funding for renewal projects.

As a result of the comments received, HUD has explored several alternative factors relevant to homelessness for potential inclusion in the PPRN formula and is re-opening the public comment period on the PPRN formula established in 24 CFR 578.17(a) of the interim rule for the purpose of seeking broader input on four proposed changes to the PPRN formula described in this section of the Notice before HUD selects the formula to include in the final rule. In developing the following proposals, HUD considered the many comments received in response to the formula in the interim rule, including those stating that the current formula utilizes factors that are not necessarily correlated with homelessness such as urban blight and population growth lag, and the request that the PPRN formula be based on updated factors that are intended to specifically measure homelessness.

In developing proposals for alternative factors to be included in the final formula, HUD sought to maintain the basic structure of the current PPRN formula, while investigating alternative data sources and measures to be included as formula factors. The characteristics of the data sources for the four proposed alternative formula factors were determined to be consistent with HUD's 2001 Report to Congress[4] on measuring need for homeless grant funding. Namely, the data sources for the proposed factors[5] are: (1) Relevant to measuring homelessness, (2) accurate, (3) timely, and (4) readily available for every jurisdiction. HUD chose not to incorporate the point-in-time count data into the formula because not all CoCs use the same methodology to conduct their counts—with some CoCs having stronger methodology than others—and because not all CoCs conduct annual PIT counts. Instead, HUD used an average of two years of PIT count data to compare how highly a factor being considered for the formula correlated with rates of homelessness. In this way, PIT counts helped quantify the relevance of potential formula factors to measuring homelessness, while insulating potential formulas from the limitations of directly including PIT counts. Further, by using factors correlated with the PIT count, the proposed formulas mitigate the risk of data fluctuations in PIT counts that may be less prevalent in large Census datasets. Finally, since PIT counts are locally-generated and self-reported by jurisdictions seeking funding under the CoC program, direct inclusion of PIT counts into an allocation formula may create perverse incentives against objective PIT count methodologies.

Before considering any new factors, HUD reviewed the factors included in the existing PPRN formula—overcrowding, poverty, pre-1940s housing, and population—and their correlation to rates of homelessness. HUD conducted Pearson's Correlation analyses[6] and found that three of these factors had a positive and statistically significant correlation with rates of homelessness. These were: (1) Overcrowding, with a .277 correlation; (2) poverty, with a .153 correlation; and (3) pre-1940s housing, with a .113 correlation. Population was not shown to have a significant correlation with rates of homelessness in a community. In addition to analyzing factors included in the current PPRN formula, HUD also considered several other potential factors related to housing markets, affordability, and demographics, as well as a hybrid factor that combined housing market and affordability measures. Understanding these factors, along with their correlation, is necessary to understanding the formulas being proposed for consideration.

Broadly speaking, the potential formula factors chosen by HUD for analysis, and described more fully below, represent important community-level determinants of homelessness identified in the research literature. Together, these factors represent three related categories of known determinants of homelessness: housing market factors, economic conditions, and housing affordability (which combines housing market and economic factors). Other categories of known community-level determinants of homelessness, such as climate factors or the robustness and quality of a community's safety net of social services for vulnerable populations, were found to lack the type of data measures (*e.g.,* timely and readily available for each jurisdiction) necessary to be included as potential formula factors. Similarly, some demographic factors identified as possible correlates to homelessness were excluded from consideration due to data limitations. For example, population growth lag could not be readily calculated for every jurisdiction due to changes in geographic boundaries since 1960 that artificially affect population counts.

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[4] See "Report to Congress: Measuring "Need" for HUD's McKinney-Vento Homeless Competitive Grants," January 2001 at *https://www.hudexchange.info/resources/documents/MeasuringNeed.pdf*.

[5] Including the decennial Census (population), American Community Survey 5-Year Data (poverty, overcrowding, pre-1940 housing, renter-occupied units, average gross rent, rent-to-income ratio, vacant rental units, and hybrid factor), and Comprehensive Housing Affordability Strategy 5-Year Data (affordability gap, rent-burdened extremely low-income households, and hybrid factor).

[6] Pearson's correlation coefficients range from -1 to 1. A correlation coefficient of -1 or 1 indicates a perfect linear relationship (negative or positive, respectively) between two variables, while a correlation coefficient of 0 indicates a random relationship or no linear relationship between two variables.

Potential Housing Market Factors: HUD considered the following potential housing market factors:

- *Renter-occupied units*—HUD explored this factor because renters generally experience higher housing instability than inhabitants of owner-occupied units. They are also more vulnerable to steep or sudden increases in rent, may be more economically unstable, and are subject to evictions as a result of non-payment of rent which tend to happen more quickly than the foreclosure process. For this factor, HUD found a .444 correlation between renter-occupied units as a percentage of all occupied housing units and rates of homelessness.
- *Average gross rent*—HUD explored this factor because several studies have found measures of "rent level" to be significantly correlated to higher rates of homelessness. However, this aggregate measure encompasses the entire rental market and may not be a good indicator of the rent pressures specifically faced by individuals and families experiencing homelessness or at risk of homelessness. For this factor, HUD found a .248 correlation between average gross rent (calculated by dividing aggregate gross rent by the number of renter-occupied housing units) and rates of homelessness.
- *Vacant rental units*—HUD explored this factor because some studies have theorized that people are at higher risk of homelessness in tight rental markets; however, HUD found no significant correlation between rental vacancy rates (calculated by dividing the number of vacant rental units by total rental units) and rates of homelessness. Therefore, it was not used in any of the proposed formulas for consideration.
- *Affordability gap*—This factor was created to measure the gap between the demand for and supply of rental units that are both affordable and available to Extremely Low-Income (ELI) [7] renter households. HUD considered this factor because ELI households have been shown to be at a greater risk of housing instability and homelessness. For this factor, HUD found a .310 correlation between this factor as a percentage of total housing units and rates of homelessness.

Potential Affordability Factors: HUD considered the following potential factors related to the cost of housing combined with renters' ability to pay:

- *Rent-to-income ratio* is the comparison of how much rent people pay when compared to their income in the designated geographic area. HUD found a .288 correlation with rates of homelessness.
- *Rent-burdened ELI households* are those ELI households that pay more than 30% of their gross income for housing. HUD found a .336 correlation with rates of homelessness.

Hybrid Factor: HUD considered one factor, developed specifically for the purposes of this formula, that weighted an affordability factor (rent-burdened ELI households) by a housing market factor (renter-occupied units), two variables found to be correlated with homelessness (with correlations of .336 and .444, respectively). This factor was calculated by multiplying the number of rent-burdened ELI households by the ratio of: the jurisdiction's percentage of renter-occupied units divided by the national percentage of renter-occupied units. HUD found that this hybrid factor had a .393 correlation with rates of homelessness.

II. Proposed PPRN Formula Options for Public Comment

After reviewing the simple (bivariate) Pearson's correlations between rates of homelessness and each of the above factors, HUD considered many different options for leveraging a combination of these factors into a formula that would better capture pro-rata need than any single factor on its own. HUD considered various factor weights as representing the relative magnitude of each factor's effect on need within a particular formula combination. The proposed weights represent what HUD views to be reasonable options for weighting the relative magnitudes of factors within each formula option based on its simple correlational analyses and the theoretical relationships between sets of factors and homelessness documented in established research literature.

HUD seeks comment on the four formula options set out in the table below. HUD believes these options are better correlated with rates of homelessness at the local level than the current PPRN formula.

Formula A	Formula B	Formula C	Formula D
10% * population	25% * poverty	25% * population	25% * poverty
15% * poverty	25% * affordability gap	25% * poverty	25% * affordability gap
25% * affordability gap	25% * rent-burdened ELI households.	50% * hybrid factor	50% * hybrid factor
25% * rent-burdened ELI households.	25% * rental units.		
25% * rental units.			

None of these proposed PPRN formula options include the 75%/25% split between entitlement and non-entitlement communities that is a part of the current formula. In addition to comments on the proposed formulas set forth above, HUD welcomes comments on factors and corresponding weights that will target formula funding to urban and rural areas most in need of homeless assistance, whether by ESG entitlement designation, population density considerations, or otherwise. In addition, HUD welcomes comments on whether any of the four proposed options should be combined into a dual or multi-formula system similar to the dual calculation system utilized under the current PPRN formula.

HUD has posted, on its Web site, a listing of each CoC's existing PPRN amount (as determined using the existing formula) as well as the amount that each CoC's PPRN would be using each of these four proposed formulas. HUD has also published a tool on its

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[7] ELI households consist of families with incomes that do not exceed 30 percent of the area median income.

Web site that stakeholders can use to adjust the weights of the proposed factors and determine the resulting PPRN. This tool can be used to explore formula options, using the factors listed above, other than the four formula options already published by HUD on its Web site. Using all of this information, HUD seeks comment on the proposed formulas made available as well as any new formulas and factors relevant to the goals and objectives of the CoC program for HUD to consider.

Additionally, HUD acknowledges that each of the proposed formula options will result in the PPRN amounts of some CoCs decreasing. To prevent against a CoC losing a substantial amount of PPRN in a given year, HUD is considering including language that would prevent a CoC from losing more than a certain portion of their PPRN. For example, if a CoC's current PPRN amount is $2.5 million and a newly adopted PPRN formula would result in the CoC's PPRN amount being reduced to $1.7 million, HUD could consider language that would provide the CoC with more than $1.7 million in PPRN, but less than $2.5 million. HUD seeks comment on this proposal and also, what the appropriate amount or portion to be protected should be.

HUD welcomes other comments on how the CoC formula may be improved.

Dated: July 19, 2016.

Harriet Tregoning,

Principal Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2016–17567 Filed 7–22–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0582

RIN 1625–AA09

Drawbridge Operation Regulation; Keweenaw Waterway, Houghton and Hancock, MI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating schedule that governs the US41 bridge, mile 16.0 over the Keweenaw Waterway between the towns of Houghton and Hancock, Michigan. The Michigan Department of Transportation (MDOT) has requested a review of the current operating schedule of the drawbridge due to a lack of openings during the early morning hours. They have also requested to expand and modify the current winter operating schedule.

DATES: Comments and related material must reach the Coast Guard on or before August 24, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0582 using Federal eRulemaking Portal at *http://www.regulations.gov.*

See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. Lee D. Soule, Bridge Management Specialist, U.S. Coast Guard; telephone 216–650–5408, email *Lee.D.Soule@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	Federal Register
MDOT	Michigan Department of Transportation
NPRM	Notice of proposed rulemaking
SNPRM	Supplemental notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background, Purpose and Legal Basis

MDOT has requested to change the operating schedule of the US41 bridge at mile 16.0. The US41 bridge is the only crossing over the Keweenaw Waterway and connects the towns of Houghton and Hancock, Michigan. The current operating schedule has been in place for approximately 31 years and the use of the waterway has significantly changed, prompting the request to modify the current regulation.

Keweenaw Peninsula is the northernmost part of Michigan's Upper Peninsula projecting into Lake Superior. The Keweenaw Waterway runs northwesterly to southeasterly and separates the peninsula from the mainland making the US41 bridge the only bridge crossing for residents and visitors to the peninsula.

The Keweenaw Waterway is used by recreational, commercial, inspected and uninspected passenger, and towing vessels. The US41 bridge is a vertical lift type drawbridge and provides a horizontal clearance of 250 feet, a vertical clearance of 103 feet in the fully open position, a vertical clearance of 7 feet in the closed position, and a vertical clearance of 35 feet in the intermediate position. The US41 bridge is a bi-level bridge originally designed with the upper level providing access for automobiles and the lower level providing access for rail, oversized vehicles, and snowmobiles.

The rail service to the peninsula has been discontinued and oversized vehicles must provide advance notice to the state before traveling over the road to the peninsula. Most recreational and commercial vessel traffic, including passenger vessel services, end prior to November 15 each year and do not resume services until after May 7 due to the formation of ice in the waterway. Large commercial freighter vessels do not routinely pass through the Keweenaw Waterway.

The current regulation, 33 CFR 117.635, requires the bridge to operate with a 24-hour advance notice for openings from January 1 through March 15 each year. From March 16 through December 31 the bridge opens on signal at all times.

III. Discussion of Proposed Rule

This rule proposes to amend 33 CFR 117.635 in accordance with the below described changes. The table below shows total bridge opening data provided by MDOT, from April 16 to December 14, between the hours of midnight and 4 a.m., for the past 6 years.

Year	Openings
2010	4
2011	6
2012	6
2013	10
2014	7
2015	6

This proposed rule would allow the bridge to operate with at least a 2-hour advance notice for openings from April 15 through December 14 between the hours of midnight and 4 a.m. During these hours no bridge tender will be required at the bridge. The bridge will be placed in the intermediate position during this 4-hour time period providing a vertical clearance of 35 feet. Vessels requiring a full bridge opening will still be able to obtain an opening with a 2-hour advance notice. Vessels may also go around the peninsula to avoid passing through the bridge.

The table below shows the total bridge opening data provided by MDOT, between December 15 and April 15, for the past 5 years.

Year	Openings
2011	0

Year	Openings
2012	1
2013	5
2014	0
2015	0

This proposed rule would allow the bridge to operate with at least a 12-hour advance notice for openings from December 15 through April 14. During these hours no bridge tender will be required at the bridge. Vessels may also go around the peninsula to avoid passing under the bridge.

At all other times, the bridge will continue to open on signal.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the infrequent requests for openings and the ability of vessels to still transit the bridge given advanced notice. Additionally, vessels may go around the peninsula.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.635 to read as follows:

§ 117.635 Keweenaw Waterway

The draw of the US41 bridge, mile 16.0 between Houghton and Hancock, shall open on signal; except that from April 15 through December 14, between midnight and 4 a.m., the draw shall be placed in the intermediate position and open on signal if at least 2 hours notice is given. From December 15 through April 14 the draw shall open on signal if at least 12 hours notice is given.

Dated: July 12, 2016.

J.E. Ryan,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 2016–17544 Filed 7–22–16; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 385

[Docket No. 16–CRB–0003–PR (2018–2022)]

Determination of Rates and Terms for Making and Distributing Phonorecords (Phonorecords III)

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Proposed rule.

SUMMARY: The Copyright Royalty Judges publish for comment proposed regulations that set rates and terms applicable during the period beginning January 1, 2018, and ending December 31, 2022, for the section 115 statutory license for making and distributing phonorecords of nondramatic musical works.

DATES: Comments and objections, if any, are due no later than August 24, 2016.

ADDRESSES: The proposed rule is posted on the agency's Web site (*www.loc.gov/crb*) and on the web at *Regulations.gov* (*www.regulations.gov*). Interested parties should submit electronic comments via email to *crb@loc.gov.* Those who chose not to submit comments electronically should see How to Submit Comments in the **SUPPLEMENTARY INFORMATION** section below for physical addresses and further instructions.

FOR FURTHER INFORMATION CONTACT: Kimberly Whittle, Attorney Advisor, by telephone at (202) 707–7658, or by email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 115 of the Copyright Act, title 17 of the United States Code, requires a copyright owner of a nondramatic musical work to grant a license (also known as the "mechanical" compulsory license) to any person who wants to make and distribute phonorecords of that work, provided that the copyright owner has allowed phonorecords of the work to be produced and distributed, and that the licensee complies with the statute and regulations. In addition to the production or distribution of physical phonorecords (compact discs, vinyl, cassette tapes, and the like), section 115 applies to digital transmissions of phonorecords, including permanent digital downloads and ringtones.

Chapter 8 of the Copyright Act requires the Copyright Royalty Judges (Judges) to conduct proceedings every five years to determine the rates and terms for the section 115 license. 17 U.S.C. 801(b)(1), 804(b)(4). Accordingly, the Judges commenced the current proceeding in January 2016, by publishing notice of the commencement and a request that interested parties submit petitions to participate. *See* 81 FR 255 (Jan. 5, 2016).

The Judges received petitions to participate in the current proceeding from Amazon Digital Services, Inc.; Apple, Inc.; American Society of Composers, Authors and Publishers (ASCAP); Broadcast Music, Inc. (BMI); Church Music Publishers Association; David Powell; Deezer S.A.; Digital Media Association (DiMA); Gear Publishing Co; GEO Music Group; Google, Inc.; Music Reports, Inc.; Nashville Songwriters Association International; National Music Publishers Association; Harry Fox Agency; Omnifone Group Limited; Pandora Media, Inc.; Recording Industry Association of America, Inc. (RIAA); Rhapsody International, Inc.; Songwriters of North America; Sony Music Entertainment; SoundCloud Limited; Spotify USA Inc.; Universal Music Group (UMG); and Warner Music Group (WMG).

The Judges gave notice to all participants of the three-month negotiation period required by 17 U.S.C. 803(b)(3) and directed that, if the participants were unable to negotiate a settlement, they should submit Written Direct Statements no later than October 3, 2016. On June 15, 2016, the Judges received a motion stating that several participants[1] had reached a partial settlement "among a significant portion of the sound recording and music publishing industries" regarding the rates and terms under Section 115 of the Copyright Act for physical phonorecords, permanent digital downloads, and ringtones for 2018–2022 rate period and seeking approval of that partial settlement. *See Joint Motion to Adopt Partial Settlement,* Docket No. 16–CRB–0003–PR (2018–2022) at 1 (June 15, 2016) (Motion).

The settlement proposes "that the royalty rates and terms presently set forth in 37 C.F.R. Part 385 Subpart A should be continued for the rate period at issue in the Proceeding, with one minor conforming update, namely, that an outdated cross reference in section 385.4 regarding statements of account be updated, and that the continued rates should apply to "Subpart A Configurations made and distributed by or on behalf of UMG and WMG" and, in the Judges' discretion, to other licensees. Motion at 3.

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[1] The participants filing the motion were Church Music Publishers Association, Nashville Songwriters Association International, National Music Publishers Association, Harry Fox Agency, and Songwriters of North America (collectively self-named the "Copyright Owners"), and licensees UMG and WMG.

Section 801(b)(7)(A) of the Copyright Act authorizes the Judges to adopt rates and terms negotiated by "some or all of the participants in a proceeding at any time during the proceeding" provided they are submitted to the Judges for approval. This section provides that Judges shall provide notice and an opportunity to comment on the agreement to (1) those that would be bound and (2) participants in the proceeding that would be bound by the terms, rates, or other determination set by the agreement. *See* section 801(b)(7)(A). The Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants not party to the agreement if any participant objects and the Judges conclude that the agreement does not provide a reasonable basis for setting statutory terms or rates. *Id.*

If the Judges adopt rates and terms reached pursuant to a negotiated settlement, those rates and terms are binding on all copyright owners of musical works and those using the musical works in the activities described in the proposed regulations.

Proposed Adjustments to Rates and Terms

In publishing the parties' proposed rates and terms, the Judges are making the requested change in the cross reference because it is clearly outdated. The text of the section it refers to merely says "reserved." In addition, the Judges propose adding the dates of the five-year period to the "General" section in order to specify the applicable dates of the rates and terms.

In the event the Judges determine not to adopt the proposed regulations for all copyright owners of musical works licensed under section 115 for the making or distributing of physical or digital phonorecords, the parties have proposed the following revised definition of *licensee*[2], which would make the rates in the partial settlement applicable only to "Subpart A Configurations made and distributed by or on behalf of [licensees] UMG and WMG":

> Licensee is Capitol Christian Music Group, Inc., Capitol Records, LLC, UMG Recordings, Inc., Warner Music Inc., any of their respective successors, and any entity controlling, controlled by, or under common control with any such entity, when it has obtained a compulsory license under 17 U.S.C. 115, and the implementing regulations, to make and distribute phonorecords of a nondramatic musical work, including by means of a digital phonorecord delivery.

The Judges solicit comments on whether they should adopt the proposed regulations, including the change in the cross reference, as statutory rates and terms relating to the making and distribution of physical or digital phonorecords of nondramatic musical works for the participants that submitted the Motion. In addition, the Judges seek comment on whether they should apply the rates and terms in the partial settlement to all copyright owners and licensees and whether they should specify the five-year period in the regulation.

Comments and objections must be submitted no later than August 24, 2016.

How To Submit Comments

Interested members of the public must submit comments to only *one* of the following addresses. If not commenting by email or online, commenters must submit an original of their comments, five paper copies, and an electronic version in searchable PDF format on a CD.

Email: crb@loc.gov; or

Online: http://www.regulations.gov; or

U.S. mail: Copyright Royalty Board, P.O .Box 70977, Washington, DC 20024–0977; or

Overnight service (only USPS Express Mail is acceptable): Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

Commercial courier: Address package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue SE., Washington, DC 20559–6000. Deliver to: Congressional Courier Acceptance Site, 2nd Street NE., and D Street NE., Washington, DC; or

Hand delivery: Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue SE., Washington, DC 20559–6000.

List of Subjects in 37 CFR Part 385

Copyright, Phonorecords, Recordings.

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to amend 37 CFR part 385 as follows:

PART 385—RATES AND TERMS FOR USE OF MUSICAL WORKS UNDER COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING OF PHYSICAL AND DIGITAL PHONORECORDS

■ 1. The authority citation for part 385 continues to read as follows:

Authority: 17 U.S.C. 115, 801(b)(1), 804(b)(4).

§ 385.1 [Amended]

■ 2. Section 385.1(a) is amended by adding ", during the period January 1, 2018, through December 31, 2022" after "17 U.S.C. 115".

§ 385.4 [Amended]

■ 3. Section 385.4 is amended by removing "§ 201.19(e)(7)(i)" and adding "§ 210.16(g)(1)" in its place.

Dated: July 19, 2016.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

[FR Doc. 2016–17437 Filed 7–22–16; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2011–0817; FRL–9949–45–OAR]

RIN 2060–AS98

National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend the National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry. In the "Rules and Regulations" section of this **Federal Register**, we are publishing a direct final rule, without a prior proposed rule, that corrects an inadvertent error and temporarily revises the testing and monitoring requirements for hydrochloric acid (HCl) due to the current unavailability of a calibration gas used for quality assurance purposes. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Written comments must be received by August 24, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–

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[2] The current definition is: "*Licensee* is a person or entity that has obtained a compulsory license under 17 U.S.C. 115, and the implementing regulations, to make and distribute phonorecords of a nondramatic musical work, including by means of a digital phonorecord delivery." 37 CFR 385.2.

OAR–2011–0817, to the *Federal eRulemaking Portal: http://www.regulations.gov.*

Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, Cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Nizich, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2825; fax number: (919) 541–5450; and email address: *nizich.sharon@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Why is the EPA issuing this proposed rule?

This document proposes to take action on amendments to the National Emission Standards for Hazardous Pollutants for the Portland Cement Manufacturing Industry. We have published a direct final rule to amend 40 CFR part 63, subpart LLL by correcting an inadvertent error and revising the testing and monitoring requirements for HCl in the "Rules and Regulations" section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment on a distinct portion of the direct final rule, we will withdraw that portion of the rule and it will not take effect. In this instance, we would address all public comments in any subsequent final rule based on this proposed rule.

If we receive adverse comment on a distinct provision of the direct final rule, we will publish a timely withdrawal in the **Federal Register** indicating which provisions we are withdrawing. The provisions that are not withdrawn will become effective on the date set out in the direct final rule, notwithstanding adverse comment on any other provision. We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time.

The regulatory text for this proposal is identical to that for the direct final rule published in the "Rules and Regulations" section of this **Federal Register**. For further supplementary information, the detailed rationale for this proposal and the regulatory revisions, see the direct final rule published in the "Rules and Regulations" section of this **Federal Register**.

II. Does this action apply to me?

Categories and entities potentially regulated by this proposed rule include:

Category	NAICS Code [1]
Portland cement manufacturing facilities	327310

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this proposed rule. To determine whether your facility is affected, you should examine the applicability criteria in 40 CFR 63.1340. If you have any questions regarding the applicability of any aspect of this this action to a particular entity, consult either the air permitting authority for the entity or your EPA Regional representative as listed in 40 CFR 63.13.

III. Statutory and Executive Orders

For a complete discussion of the administrative requirements applicable to this action, see the direct final rule in the "Rules and Regulations" section of this **Federal Register**.

Dated: July 14, 2016.

Gina McCarthy,

Administrator.

[FR Doc. 2016–17292 Filed 7–22–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 171

[EPA–HQ–OPP–2011–0183; FRL–9947–75]

RIN 2070–AJ20

Notification of Submission to the Secretary of Agriculture; Pesticides; Certification of Pesticide Applicators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of submission to the Secretary of Agriculture.

SUMMARY: This document notifies the public as required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) that the EPA Administrator has forwarded to the Secretary of the United States Department of Agriculture (USDA) a draft regulatory document concerning the certification of pesticide applicators rule revisions. The draft regulatory document is not available to the public until after it has been signed and made available by EPA.

DATES: See Unit I. under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2011–0183, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michelle Arling, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–5891; email address: *arling.michelle@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking?

Section 25(a)(2)(B) of FIFRA requires the EPA Administrator to provide the Secretary of USDA with a copy of any draft final rule at least 30 days before signing it in final form for publication in the **Federal Register**. The draft final rule is not available to the public until after it has been signed by EPA. If the Secretary of USDA comments in writing regarding the draft final rule within 15 days after receiving it, the EPA Administrator shall include the comments of the Secretary of USDA, if requested by the Secretary of USDA, and the EPA Administrator's response to those comments with the final rule that publishes in the **Federal Register**. If the Secretary of USDA does not comment in writing within 15 days after receiving the draft final rule, the EPA Administrator may sign the final rule for publication in the **Federal Register** any time after the 15-day period.

II. Do any statutory and executive order reviews apply to this notification?

No. This document is merely a notification of submission to the Secretary of USDA. As such, none of the regulatory assessment requirements apply to this document.

List of Subjects in Part 171

Environmental protection, Agricultural worker safety, Applicator competency, Pesticide safety training, Pesticide worker safety, Pesticides and pests, Restricted use pesticides.

Dated: July 15, 2016.

Jack E. Housenger,

Director, Office of Pesticide Programs.

[FR Doc. 2016–17405 Filed 7–22–16; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 81, No. 142
Monday, July 25, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Pike/San Isabel National Forests; Colorado; Pike/San Isabel National Forests Travel Management Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service proposes to undertake motorized travel management planning to designate roads, trails, and areas open to public motorized vehicle use on the six districts of the Pike and San Isabel National Forests (PSI), pursuant to 36 CFR part 212, subpart B. The proposed road and trail environmental impact statement (EIS) evaluation and record of decision (ROD) will determine which roads and trails will be designated or re-designated for public motorized use and published on future motor vehicle use maps (MVUMs), as described in subpart B of the Travel Management Final Rule, dated November 9, 2005. The PSI's MVUMs display all roads and motorized trails open to the public for motorized use. This action is in direct response to the PSI MVUM settlement agreement (hereafter referred to as the settlement agreement), which is the culmination of a multi-year lawsuit brought against the Forest Service by The Wilderness Society, Quiet Use Coalition, Wildlands CPR, Center for Native Ecosystems and Great Old Broads for Wilderness. The Cimarron and Comanche National Grasslands, which are administered in conjunction with the Pike and San Isabel National Forests, will not be included in this EIS.

Scoping Process: Scoping is an ongoing process used to identify important issues and determine the extent of analysis necessary for an informed decision on a proposed action. This Notice of Intent (NOI) serves as formal initiation of the scoping process.

The Forest Service is seeking comments from individuals, organizations, and local, state, and federal agencies that may be interested in or affected by the proposed action (described below). Comments may pertain to the nature and scope of the environmental, social, and economic issues, and possible alternatives related to the development of the travel management plan and EIS. Scoping notices have been sent to potentially affected persons and those that have expressed a continued interest in this project. Other interested individuals, organizations, or agencies may have their names added to the mailing list for this project at any time by submitting a request to the PSI Forest Planner, John Dow at 719–553–1476 (*jrdow@fs.fed.us*).

DATES: Comments concerning the scope of the analysis must be received by September 8, 2016. The scoping comment period commences on NOI publication date and continues for 45 days thereafter. The draft environmental impact statement is expected in early spring of 2018 and the final environmental impact statement is expected in early 2019.

ADDRESSES: Written comments concerning this notice should be addressed to Travel Management, Pike/San Isabel National Forests, 2840 Kachina Dr., Pueblo, CO 81008. Comments may also be sent via email to *comments@psitravelmanagement.org,* or via facsimile to 719–553–1440, with "PSI Travel Management" in the subject line. Comments must be readable in Microsoft Word, rich text or pdf formats.

All comments, including names and addresses when provided, are placed in the record and will be available for public inspection and copying. The public may inspect comments after they are received and summarized at the travel planning Web page at: *www.psitravelmanagement.org.*

FOR FURTHER INFORMATION CONTACT: John Dow, Forest Planner at 719–553–1476. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The current PSI Land and Resource Management Plan (Forest Plan) dates back to 1984. Many changes have occurred since that time, in terms of type and volume of use, general population pressures, urban interface development, and other factors. Further, the improved precision of field measurements (*i.e.,* global positioning system devices) and graphical depiction of route locations and management area boundaries has at times resulted in perceived conflicts with data published in 1984.

The settlement agreement referenced herein identified a subset of MVUM designated roads and trails that were being managed contrary to Forest Plan direction. Alternatives A and B represent the issues addressed in the settlement agreement. Alternatives C and D represent issues from the settlement agreement along with revisions to certain rotues as a result of the PSI's Travel Analysis Process (TAP).

Purpose and Need for Action

The action's purpose and need is to improve management of motor vehicle use via evaluation of motorized route designations on National Forest System (NFS) lands within the PSI in compliance with 36 CFR parts 212, 251, 261, and 295, and all other applicable laws. The action also needs to consider effects on resources with the objective of minimizing the impacts resulting from the designated motorized trails and areas pursuant to 36 CFR 212.55(b), and to analyze the environmental impacts of all motorized routes proposed for designation, including routes in the baseline contested by the Plaintiffs as identified in the settlement agreement. The designation of roads and trails must balance the needs of the broad range of recreationalists and other legitimate users of the national forests with the need to protect natural and cultural resources.

Proposed Action

In accordance with 36 CFR part 212, the proposed action will analyze current designated motorized roads and trails, minus certain specific routes described in the settlement agreement. The proposed action will also analyze some priority proposed changes to the transportation system, including the inclusion of some current Forest Order transportation prohibitions associated with roads and trails on NFS lands, and including appropriate road and trail seasonal restrictions within the PSI.

These analyses could result in changes to the existing transportation system on the PSI. Depending on the analyses of roads and motorized trails, *i.e.,* which roads and trails are designated as open to the public, it may be necessary to amend the Forest Plan.

Per the settlement agreement dated November 16, 2015, the PSI transportation system that is open to public motorized travel consists of a total of 2,004 miles of NFS roads and 507 miles of NFS trails. That November 16, 2015 system is documented through USFS databases, spreadsheets, and reports, along with spatial data, and can be accessed from the travel planning Web page at: *psitravelmanagement.org.*

Possible Alternatives

Four preliminary alternatives have been identified and are described briefly below.

Alternative A: The No-Action Alternative, as per settlement agreement language, would consist of the public motorized routes depicted on the following MVUMs minus 30 NFS routes/route segments identified in the settlement agreement, that are either already decommissioned or would be temporarily changed to administrative use only during the interim EIS process:

- 2010 Pikes Peak Ranger District MVUM
- 2010 South Park Ranger District MVUM
- 2010 Salida Ranger District MVUM
- 2012 Leadville Ranger District MVUM
- 2012 San Carlos Ranger District MVUM
- 2013 South Platte Ranger District MVUM

Alternative B: This Alternative would consist of the public motorized routes as they are currently recorded in the official Forest Service Infrastructure (INFRA) database, as of June 16, 2016, minus routes contested by the Plaintiffs and identified in the settlement agreement.

Alternative C: This Alternative would consitutue the routes as they are currently recorded in the official Forest Service INFRA database, as of June 16, 2016, plus certain revisions to those roads that were considered as urgent, priority changes, in conformance with the results of the PSI's TAP Addendum Reports. Over the course of the last three years, PSI resource specialists conducted TAPs covering each ranger district. A TAP is a process whereby personnel representing key resource areas assign benefit and risk ratings to each road. The results of each TAP were compiled in a TAP Addendum Report. Urgent, priority changes may include, but would not be limited to: decommissioning and/or conversion of unneeded authorized routes, elimination of mixed use modes of travel on certain roads, seasonal closures, road/trail reroutes, construction of new motorized recreational trails and/or extensions to existing trails, downgrading of maintenance levels, and other such revisions necessary for the effective management of the NFS transportation network. The goal of this alternative would be to move toward a safe, affordable, and environmentally sound transportation system, while leaving room for future site-specific revisions as needed.

Alternative D: This Alternative would consist of all the Alternative C revisions, plus additional, non-urgent changes, which would direct the PSI toward the minimum NFS network needed for safe and efficient travel, and for administration, utilization, and protection of NFS lands per 36 CFR 212.5(b)(1). The additional changes would be made in accordance with the opportunities and recommendations provided in the TAP Addendum Reports for the individual districts on the PSI.

Responsible Official

The Responsible Official is Erin Connelly, Forest and Grasslands Supervisor, Pike and San Isabel National Forests and Cimarron and Comanche National Grasslands, 2840 Kachina Dr., Pueblo CO. 81008.

Scoping Process

The Forest Service will conduct scoping meetings to solicit comments from the public and interested parties on this proposed action.

Meetings are currently scheduled from 5:00 p.m. to 7:00 p.m. at the following locations and dates:

Pueblo, CO—August 23, 2016: Pueblo Community College, Fortino Ballroom (2nd floor of student center), 900 West Orman Avenue, Pueblo, CO 81004.

Salida, CO—August 24, 2016: Steam Plant Theatre and Event Center Ballroom, 220 West Sackett Street, Salida, CO 81201.

Colorado Springs, CO—August 25, 2016: Colorado Springs Utilities, Pikes Peak Room, Leon Young Service Center, 1521 S. Hancock Expressway, Colorado Springs, CO 80903.

Additional information will be posted on the travel planning Web page at: *psitravelmanagement.org.*

Nature of Decisions To Be Made

- Is the proposal consistent with the Pike and San Isabel National Forests and Cimarron and Comanche National Grasslands Resource Management Plan (PSICC RMP)?
- If the proposal is not consistent with the PSICC RMP, what is the scope and scale of any required amendments?
- What alternative or combination of alternatives ensures the PSI follows the requirements for multiple uses outlined in the Multiple Use Sustained Yield Act of 1960.
- What alternative or combination of alternatives best represents the designated motorized roads and trails network taking into consideration the travel management rule motorized trails and road designation criterion outlined in 36 CFR 212.55.

Preliminary Issues

Preliminary issues identified by the PSI are:

(1) Resource damage caused by user-created (non-NFS) routes;

(2) Potential lost recreational opportunities from route closures;

(3) Safety concerns on mixed-use (highway legal and non-highway legal) routes.

Dated: July 8, 2016.

Erin Connelly,

Forest and Grasslands Supervisor, Pike and San Isabel National Forests and Cimarron and Comanche National Grasslands.

[FR Doc. 2016–17498 Filed 7–22–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

North Gifford Pinchot Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The North Gifford Pinchot Resource Advisory Committee (RAC) will meet in Salkum, Washington. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *http://www.fs.usda.gov/main/giffordpinchot/workingtogether/advisorycommittees.*

DATES: The meeting will be held on Tuesday, August 16, 2016, from 10:00 a.m. to 4:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Salkum Timberland Library, Community Room, 2480 U.S. Highway 12, Salkum, Washington.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Gifford Pinchot National Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Gala Miller, RAC Coordinator, by phone at 360–891–5014 or via email at *galamiller@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Elect the Chair and Vice Chair of the RAC,
2. Review submitted Title II project proposals, and
3. Make project recommendations for Title II funding.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 10, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Gala Miller, RAC Coordinator, 10600 NE 51st Circle, Vancouver, Washingtonn 98682; by email to *galamiller@fs.fed.us,* or via facsimile to 360 891 5045.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: July 18, 2016.

Gina Owens,

Forest Supervisor.

[FR Doc. 2016–17496 Filed 7–22–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Office of Procurement and Property Management

Public Availability of FY 2015 Service Contract Inventories

AGENCY: Office of Procurement and Property Management, Departmental Management, Department of Agriculture.

ACTION: Notice of public availability of FY 2015 Services Contracts Inventories.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), Department of Agriculture is publishing this notice to advise the public of the availability of the FY 2015 Services Contracts Inventory. This inventory provides information on FY 2015 service contract actions over $25,000. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010, by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.*

The Department of Agriculture has posted its inventory and a summary of the inventory on the Office of Procurement and Property Management homepage at the following link: *http://www.dm.usda.gov/procurement/.*

FOR FURTHER INFORMATION CONTACT: Crandall Watson, Office of Procurement and Property Management, at (202) 720–7529, or by mail at OPPM, MAIL STOP 9304, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250–9303. Please cite "2015 Service Contract Inventory" in all correspondence.

Lisa M. Wilusz,

Director, Office of Procurement and Property Management.

[FR Doc. 2016–17499 Filed 7–22–16; 8:45 am]

BILLING CODE 3410–TX–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Solicitation of Applications for the Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the solicitation of applications for funds available under the Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program (the Program) to provide guaranteed loans to fund the development, construction, and Retrofitting of commercial scale biorefineries using Eligible technology and of Biobased product manufacturing facilities that use technologically new commercial scale processing and manufacturing equipment to convert Renewable chemicals and other biobased outputs of biorefineries into end-user products, on a commercial scale.

DATES: With this Notice, the Agency is announcing two separate application cycles, as is provided which are established in accordance with 7 CFR 4279.260(b), with application closing dates of 4:30 p.m. Eastern Daylight Time, October 3, 2016, and 4:30 p.m. Eastern Daylight Time, April 3, 2017.

Applications must be received in the USDA Rural Business-Cooperative Service, Energy Division no later than 4:30 p.m. Eastern Daylight Time of the application closing date to compete for program funds. Any application received after 4:30 p.m. Eastern Daylight Time of the application closing date will be considered for the subsequent application cycle, provided that funding is available.

ADDRESSES: Applications and forms may be obtained from:

- USDA, Rural Business-Cooperative Service, Energy Division, Attention: Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program, 1400 Independence Avenue SW., STOP 3225, Washington, DC 20250–3225.
- Agency Web site: *http://forms.sc.egov.usda.gov/eForms/welcomeAction.do?Home.* Follow the instructions for obtaining the application and forms. Application materials can also be obtained from the Agency's Web site. *http://www.rd.usda.gov/programs-services/biorefinery-assistance-program.*

FOR FURTHER INFORMATION CONTACT: Todd Hubbell, Rural Business-Cooperative Service, Energy Division, Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program, USDA, 1400 Independence Avenue SW., Mail Stop 3225, Washington, DC 20250–3225. Telephone: 202–690–2516. Email: *Todd.Hubbell@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements associated with the Program, as covered in this Notice, have been approved by the Office of Management Budget (OMB) under OMB Control Number 0570–0065.

Overview

Federal Agency Name: Rural Business-Cooperative Service (an Agency of USDA in the Rural Development mission area).

Solicitation Opportunity Title: Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program.

Announcement Type: Notice of Solicitation of Applications.

Catalog of Federal Domestic Assistance (CFDA) Number: The CFDA number for this Notice is 10.865.

Dates: Applications must be received in the USDA Rural Business-Cooperative Service, Energy Division no later than the application closing dates of 4:30 p.m. Eastern Daylight Time, October 3, 2016, and 4:30 p.m. Eastern Daylight Time, April 3, 2017. Any application received after 4:30 p.m. Eastern Daylight Time of the application closing date will be considered for the subsequent application cycle, provided that funding is available.

Availability of Notice and Rule: This Notice and the interim rule for the Program are available on the USDA Rural Development Web site at: *http://www.rd.usda.gov/programs-services/biorefinery-assistance-program* and at *http://www.rd.usda.gov/newsroom.*

I. Funding Opportunity Description

A. *Purpose of the Program.* The purpose of the Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Program is to assist in the development of new and emerging technologies for the development of Advanced biofuels, Renewable chemicals, and Biobased product manufacturing. This is achieved through guarantees for loans made to fund the development, construction, and Retrofitting of Commercial scale Biorefineries using Eligible technology and of Biobased product manufacturing facilities that use technologically new commercial scale processing and manufacturing equipment and required facilities to convert Renewable chemicals and other biobased outputs of biorefineries into end-user products on a commercial scale.

B. *Statutory Authority.* This Program is authorized under 7 U.S.C. 8103. Regulations are contained in 7 CFR part 4279, subpart C and in 7 CFR part 4287, subpart D.

C. *Definition of Terms.* The definitions applicable to this Notice are published at 7 CFR 4279.202 and 7 CFR 4287.302.

C. *Application awards.* The Agency will review, evaluate, score, and award applications received in response to this Notice based on the provisions found in 7 CFR part 4279, subpart C and as indicated in this Notice.

II. Award Information

A. *Available funds.* This Notice is a solicitation for applications that will be funded using budget authority provided by the Agricultural Act of 2014 (2014 Farm Bill). The 2014 Farm Bill authorized mandatory funding in each of fiscal years 2014, 2015 and 2016. Of the funds available, the 2014 Farm Bill provided for up to 15 percent of the mandatory funds for only fiscal years 2014 and 2015 to promote Biobased product manufacturing.

B. *Type of Award.* Guaranteed loan.

C. *Approximate Number of Awards.* Subject to the amount of funding available.

D. *Guarantee Loan Funding.* The provisions of 7 CFR 4279.232 apply to this Notice. The Borrower needs to provide the remaining funds from other non-Federal sources to complete the Project.

E. *Guarantee and Annual Renewal Fees.* The guarantee and Annual Renewal Fees specified in 7 CFR 4279.231 are applicable to this Notice.

F. *Anticipated Award Date.* The award date will vary based on timing of completion of each Project's individual application process.

III. Eligibility Information

A. *Eligible Lenders.* To be eligible for this Program, Lenders must meet the eligibility requirements in 7 CFR 4279.208.

B. *Eligible Borrowers.* To be eligible for this Program, Borrowers must meet the eligibility requirements in 7 CFR 4279.209.

C. *Eligible Projects.* To be eligible for this Program, projects must meet the eligibility requirements in 7 CFR 4279.210.

D. *Application Completeness.* Incomplete Phase 1 applications will be rejected and the Project will be given no further consideration. Lenders will be informed of the element(s) that made the application incomplete. If the Lender makes the required edits and resubmits the application to the USDA's Rural Business-Cooperative Service, Energy Division by 4:30 p.m. Eastern Daylight Time, on the application closing date, the Agency will reconsider the application.

IV. Application Submission Information

A. *Letter of Intent.* For each guarantee request, the Lender or the Borrower must submit to the Agency a non-binding letter of intent to apply for a loan guarantee, not less than 30 calendar days prior to the application deadline. The letter of intent due date is September 6, 2016 for the October 3, 2016 application cycle and March 6, 2017 for the April 3, 2017 cycle. The letter must identify the Borrower, the Lender and any Project sponsors; describe the Project and Project location; describe the proposed feedstock, primary technologies of the facility, and primary products produced; estimate the Total Project Cost and amount of loan requested; and identify the application cycle due date. The Agency reserves the right to request additional information from potential applicants. Applications that do not submit a letter of intent by 30 days prior to the application closing date will not be accepted by the Agency in that particular application cycle.

B. *Application Submittal.* For each guarantee request, the Lender must submit to the Agency an application that is in conformance with 7 CFR 4279.261. The content and methods of application submittal are specified below. Additionally, the Agency has developed an Application Guide that explains the application procedures and details the process for submission of an application. This guide is located at *http://www.rd.usda.gov/files/RBS_Section9003Biorefinery_ApplicationGuide.pdf.*

C. *Content and Form of Submission.* All applicants must submit one paper copy of the application materials and an electronic copy containing the same information that is included in the paper copy. Detailed instructions regarding application submission are explained in the Application Guide that the Agency has developed. The Application Guide is available online on the "Forms and Resources" page at *http://www.rd.usda.gov/programs-services/biorefinery-assistance-program* or by contacting Todd Hubbell, Telephone: 202–690–2516. Email: *Todd.Hubbell@wdc.usda.gov.* Application materials should be submitted to USDA Rural Business-Cooperative Service, Energy Division, Attention: Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program, 1400 Independence Avenue SW., STOP 3225, Washington, DC 20250–3225.

The Agency's application process is divided into two phases. Phase 1 applications will provide information needed to determine Lender, Borrower, and Project eligibility; preliminary economic and technical feasibility; and the priority score of the application. Based on the priority score ranking, the Agency will invite applicants whose Phase 1 applications receive higher priority scores to submit Phase 2 applications. Phase 2 application materials will be submitted as the Project planning and engineering are finalized and will include information such as: Environmental compliance information, technical report, financial model, and the Lender's credit evaluation. Phase 1 applications must contain the information required in the Agency's Application Guide and in accordance with 7 CFR 4279.261.

D. *Local Owner.* For applications submitted under this Notice, when the majority of feedstock to be utilized by the Project on an annual basis is harvested from the land, the term "local owner" is defined as an individual who owns any portion of an eligible Biorefinery and whose primary residence is located within the geographic area that the Biorefinery's feedstock originates. In all other cases, "local owner" is defined as an individual who owns any portion of an eligible Biorefinery and whose primary residence is located within 100 miles of the Biorefinery.

V. Biobased Product Manufacturing

This notice also includes the solicitation of applications for funds available under the Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program to specifically fund Biobased product manufacturing. The 2014 Farm Bill added Biobased product manufacturing to the Program and provided for up to 15 percent of the mandatory funds for fiscal years 2014 and 2015 to be used to support facilities producing Biobased products for end use. The 2014 Farm Bill provides the definition of "Biobased product manufacturing," which the Agency has incorporated into the subsequent interim rule (see 7 CFR 4279.202). This definition requires that the Biobased product manufacturing facility use Renewable chemicals and other biobased outputs of biorefineries as inputs and also requires that the Borrower use technologically new commercial scale processing and manufacturing equipment and required facilities. The facility must produce end-user products.

VI. Biobased Product Manufacturing Eligibility Information

The eligibility requirements for prospective Lenders and Borrowers will not change from those listed above for the Program, generally. For Biobased product manufacturing Projects, the Eligible Project requirement is modified to reflect that eligible Projects will use technologically new commercial scale processing and manufacturing equipment and required facilities to convert Renewable chemicals and other biobased outputs of biorefineries into end-user products on a commercial scale.

Additionally, for purposes of Biobased product manufacturing Projects, only for purposes of technical review, technical reports need to address only the technologically new commercial scale processing and manufacturing equipment and required facilities.

VII. Biobased Product Manufacturing Application Processing Procedures

The application processing procedures will remain the same for Biobased product manufacturing projects as for the projects described above.

For applications submitted under this Notice, "local owner" is defined as an individual who owns any portion of an eligible Biorefinery and whose primary residence is located within 100 miles of the Biorefinery.

VIII. Biobased Product Manufacturing Scoring

In lieu of the criteria listed in 7 CFR 4279.266, Biobased product manufacturing Projects will be scored using the criteria listed below:

(a) Whether the Borrower has established a market for the manufactured Biobased product, as applicable. A maximum of 16 points can be awarded. Points to be awarded will be determined as follows:

(1) Degree of commitment of contracted sales agreements. A maximum of 6 points will be awarded.

(i) If the Borrower has signed contracts for purchase for greater than 50 percent of the dollar value of manufactured Biobased product, 6 points will be awarded.

(ii) If the Borrower has signed letters of intent to enter into contracted sales agreements, or comparable documentation, for the purchase for greater than 50 percent of the dollar value of the manufactured Biobased product, or combination of signed contracts or agreements and letters of intent or comparable documentation, 4 points will be awarded.

(iii) If the Borrower has signed letters of interest to enter into contracted sales agreements, or comparable documentation, for the purchase for greater than 50 percent of the dollar value of the manufactured Biobased product, or combination of signed contracts, letters of intent or comparable documentation, 2 points will be awarded.

(2) Duration of contracted sales agreements. A maximum of 6 points will be awarded.

(i) If the Borrower commits to enter into contracted sales agreements prior to loan closing for purchase for greater than or equal to 50 percent of the dollar value of manufactured Biobased product for the period not less than the loan term, 6 points will be awarded.

(ii) If the Borrower commits to enter into contracted sales agreements prior to loan closing for purchase for greater than or equal to 50 percent of the dollar value of the manufactured Biobased product for the period not less than 5 years but less than the term of the loan, 4 points will be awarded.

(iii) If the Borrower commits to enter into contracted sales agreements prior to loan closing for purchase for greater than or equal to 50 percent of the dollar value of the manufactured Biobased product for the period not less than 1 year but less than 5 years, 2 points will be awarded.

(3) Financial strength of the contracted sales agreement counterparty. A maximum of 4 points will be awarded.

(i) If the Borrower commits to enter into contracted sales agreements prior to loan closing for purchase for greater than or equal to 50 percent of the dollar value of the manufactured Biobased product with a counterparty with a corporate credit rating not less than AA, Aa2, or equivalent, 4 points will be awarded.

(ii) If the Borrower commits to enter into contracted sales agreements prior to loan closing for purchase for greater than or equal to 50 percent of the dollar value of the manufactured Biobased product with a counterparty with a corporate credit rating less than AA, Aa2, or equivalent, but not less than

A−, or A3, or equivalent, 2 points will be awarded.

(iii) If the Borrower commits to enter into contracted sales agreements prior to loan closing for purchase for greater than or equal to 50 percent of the dollar value of the manufactured Biobased product with a counterparty with a corporate credit rating less than A−, or A3, or equivalent, but not less than BBB−, or Baa3, or equivalent, 1 point will be awarded.

(b) Whether the area in which the Borrower proposes to place the Project, defined as the area that will supply the Renewable chemicals and other biobased outputs of biorefineries to the proposed Project, has any other similar facilities. A maximum of 5 points can be awarded. Points to be awarded will be determined as follows:

(1) If the area that will supply the Renewable chemicals and other biobased outputs of biorefineries to the proposed Project does not have any other similar facilities, 5 points will be awarded.

(2) If there are other similar facilities located within the area that will supply the renewable chemicals and other biobased outputs of biorefineries to the proposed Project, 0 points will be awarded.

(c) Whether the Borrower is proposing to use Renewable chemicals and other biobased outputs of biorefineries not previously used in the Biobased product manufacturing. A maximum of 10 points can be awarded. Points to be awarded will be determined as follows:

(1) If the Borrower proposes to use Renewable chemicals and other biobased outputs of biorefineries previously used in the manufacture of a Biobased product in a commercial facility, 0 points will be awarded.

(2) If the Borrower proposes to use Renewable chemicals and other biobased outputs of biorefineries not previously used in the manufacture of a Biobased product in a commercial facility, 10 points will be awarded.

(d) Whether the Borrower is proposing to work with producer associations or cooperatives. A maximum of 5 points can be awarded. Points to be awarded will be determined as follows:

(1) If at least 50 percent of the dollar value of Renewable chemicals and other biobased outputs of biorefineries to be used by the proposed Project will be supplied by producer associations and cooperatives or biorefineries supplied by producer associations and cooperatives, 5 points will be awarded.

(2) If at least 30 percent of the dollar value of Renewable chemicals and other biobased outputs of biorefineries to be used by the proposed Project will be supplied by producer associations and cooperatives or biorefineries supplied by producer associations and cooperatives, 3 points will be awarded.

(e) The level of financial participation by the Borrower, including support from non-Federal Government sources and private sources. A maximum of 20 points can be awarded. Points to be awarded will be determined as follows:

(1) If the sum of the loan amount requested and other direct Federal funding is less than or equal to 50 percent of total Eligible project costs, 20 points will be awarded.

(2) If the sum of the loan amount requested and other direct Federal funding is greater than 50 percent but less than or equal to 55 percent of total Eligible project costs, 16 points will be awarded.

(3) If the sum of the loan amount requested and other direct Federal funding is greater than 55 percent but less than or equal to 60 percent of total Eligible project costs, 12 points will be awarded.

(4) If the sum of the loan amount and other direct Federal funding is greater than 60 percent but less than or equal to 65 percent of total Eligible project costs, 8 points will be awarded.

(5) If the sum of the loan amount and other direct Federal funding is greater than 65 percent but less than or equal to 70 percent of total Eligible project costs, 4 points will be awarded.

(f) Whether the Borrower has established that the adoption of the manufacturing process proposed in the application will have a positive effect on three impact areas: resource conservation (*e.g.,* water, soil, forest), public health (*e.g.,* potable water, air quality), and the environment (*e.g.,* compliance with an applicable renewable fuel standard, greenhouse gases, emissions, particulate matter). A maximum of 10 points can be awarded. Based on what the Borrower has provided in either the application or the Feasibility study, points to be awarded will be determined as follows:

(1) If process adoption will have a positive impact on any one of the three impact areas (resource conservation, public health, or the environment), 3 points will be awarded.

(2) If process adoption will have a positive impact on two of the three impact areas, 6 points will be awarded.

(3) If process adoption will have a positive impact on all three impact areas, 10 points will be awarded.

(g) Whether the Borrower can establish that, if adopted, the technology proposed in the application will not have any economically significant negative impacts on existing manufacturing plants or other facilities that use Renewable chemicals and other biobased outputs of biorefineries. A maximum of 5 points can be awarded. Points to be awarded will be determined as follows:

(1) If the Borrower has failed to establish, through an independent third-party Feasibility study, that the production technology proposed in the application, if adopted, will not have any economically significant negative impacts on existing manufacturing plants or other facilities that use similar Renewable chemicals and other biobased outputs of biorefineries, 0 points will be awarded.

(2) If the Borrower has established, through an independent third-party Feasibility study, that the production technology proposed in the application, if adopted, will not have any economically significant negative impacts on existing manufacturing plants or other facilities that use Renewable chemicals and other biobased outputs of biorefineries, 5 points will be awarded.

(h) The potential for rural economic development. A maximum of 10 points can be awarded. Points to be awarded will be determined as follows:

(1) If the Project is located in a Rural Area, 5 points will be awarded.

(2) If the Project creates jobs through direct employment with an average wage that exceeds the county median household wages where the Project will be located, 5 points will be awarded.

(i) The level of local ownership of the facility proposed in the application. For the purposes of this Notice, a Local owner is defined as "An individual who owns any portion of an eligible Advanced biofuel Biorefinery and whose primary residence is located within 100 miles of the Biorefinery." A maximum of 5 points can be awarded. Points to be awarded will be determined as follows:

(1) If Local owners have an ownership interest in the facility of more than 20 percent but less than or equal to 50 percent, 3 points will be awarded.

(2) If Local owners have an ownership interest in the facility of more than 50 percent, 5 points will be awarded.

(j) Whether the Project can be replicated. A maximum of 10 points can be awarded. Points to be awarded will be determined as follows:

(1) If the Project can be commercially replicated regionally (*e.g.,* Northeast, Southwest, etc.), 5 points will be awarded.

(2) If the Project can be commercially replicated nationally, 10 points will be awarded.

(k) If the Project uses a particular technology, system, or process that is not currently operating at commercial scale as of October 1 of the fiscal year for which the funding is available; October 1, 2016, 5 points will be awarded.

(l) The Administrator can award up to a maximum of 10 bonus points:

(1) To ensure, to the extent practical, there is diversity in the types of Projects approved for loan guarantees to ensure as wide a range as possible technologies, products, and approaches are assisted in the program portfolio; and

(2) To applications that promote partnerships and other activities that assist in the development of new and emerging technologies for the development of Renewable chemicals and other biobased outputs of biorefineries, so as to, as applicable, promote resource conservation, public health, and the environment; diversify markets for agricultural and forestry products and agriculture waste material; and create jobs and enhance the economic development of the rural economy. No additional information regarding partnerships is detailed in this Notice.

IX. General Program Information

A. *Loan Origination.* Lenders seeking a loan guarantee under this Notice must comply with all of the provisions found in 7 CFR 4279, subpart C.

B. *Loan Processing.* The Agency will process loans guaranteed under this Notice in accordance with the provisions specified in 7 CFR 4279.260 through 4279.290.

C. *Evaluation of Applications and Awards.* Awards under this Notice will be made on a competitive basis; submission of an application neither reserves funding nor ensures funding. The Agency will evaluate each application received in the USDA Rural Business–Cooperative Service, Energy Division, select Phase 1 applications in accordance with 7 CFR 4279.267 to invite submittal of Phase 2 applications and will make awards using the provisions specified in 7 CFR 4279.278.

D. *Guaranteed Loan Servicing.* The Agency will service loans guaranteed under this Notice in accordance with the provisions specified in 7 CFR 4287.301 through 4287.399.

E. *System for Award Management (SAM) and Dun and Bradstreet Data Universal Numbering System (DUNS) Registration.* Unless exempt under 2 CFR 25.110, the Applicant must be registered in the SAM prior to submitting an application and maintain an active SAM registration with current information at all times during which it has an active Federal award or an application under consideration by the Agency. Applicants must provide a DUNS number for each application submitted to the Agency.

X. Administration Information

A. *Notifications.* The Agency will notify, in writing, Lenders whose Phase 1 applications have scored highest and will invite them to submit Phase 2 applications. If the Agency determines it is unable to guarantee any particular loan, the Lender will be informed in writing. Such notification will include the reason(s) for denial of the guarantee.

B. *Administrative and National Policy Requirements.*

1. *Review or Appeal Rights.* A person may seek a review of an Agency decision or appeal to the National Appeals Division in accordance with 7 CFR 4279.204.

2. *Exception Authority.* The provisions specified in 7 CFR 4279.203 and 7 CFR 4287.303 apply to this Notice.

C. *Environmental Review.* The Agency will review all applicant proposals that may qualify for assistance under this section in accordance with 7 CFR part 1970, Environmental Policies and Procedures. The environmental review for projects that score high enough will be submitted during the Phase 2 application process and must be conducted in accordance with 7 CFR part 1970, Environmental Policies and Procedures.

XI. Agency Contacts

For general questions about this Notice, please contact Todd Hubbell, Rural Business–Cooperative Service, Energy Division, Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program, U.S. Department of Agriculture, 1400 Independence Avenue SW., Mail Stop 3225, Washington, DC 20250–3225. Telephone: 202–690–2516. Email: *Todd.Hubbell@wdc.usda.gov.*

Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form (PDF), found online at *http://www.ascr.usda.gov/complaint_filing_cust.html,* or at any USDA office, or call (866) 632–9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410, by fax (202) 690–7442 or email at *program.intake@usda.gov.*

Individuals who are deaf, hard of hearing or have speech disabilities and you wish to file either an EEO or program complaint please contact USDA through the Federal Relay Service at (800) 877–8339 or (800) 845–6136 (in Spanish).

Persons with disabilities, who wish to file a program complaint, please see information above on how to contact us by mail directly or by email. If you require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Dated: July 18, 2016.

Samuel H. Rikkers,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2016–17486 Filed 7–22–16; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Solicitation of Applications for the Repowering Assistance Program

AGENCY: Rural Business-Cooperative Service and Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the solicitation of applications for funds available under the Repowering Assistance Program to encourage the use of renewable biomass as a replacement fuel source for fossil fuels used to provide process heat or power in the operation of eligible biorefineries. To be eligible for payments, biorefineries must have been in existence on or before June 18, 2008.

DATES: Applications will be accepted from July 25, 2016 through October 24,

2016. Applications received after October 24, 2016, regardless of their postmark, will not receive consideration. If the actual deadline falls on a weekend or a federally-observed holiday, the deadline is the next Federal business day.

ADDRESSES: Applications and forms may be obtained from:

- USDA, Rural Business-Cooperative Service, Energy Division, Attention: Repowering Assistance Program, 1400 Independence Avenue SW., Room 6901–S, STOP 3225, Washington, DC 20250–3225.
- Agency Web site: *http://forms.sc.egov.usda.gov/eForms.* Follow instructions for obtaining the application and forms. Application materials can also be obtained from the Agency's Web site. *http://www.rd.usda.gov/programs-services/repowering-assistance-program.*

FOR FURTHER INFORMATION CONTACT: For further information on this payment program, please contact Fred Petok, USDA, Rural Business-Cooperative Service, Energy Division, 1400 Independence Avenue SW., Room 6901–S, STOP 3225, Washington, DC 20250–3225. Telephone: 202–690–0784. Email: *frederick.petok@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements associated with the Section 9004 Repowering Assistance Program, as covered in this Notice, have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0570–0066.

Overview

Federal Agency Name: Rural Business-Cooperative Service (an agency of the United States Department of Agriculture (USDA) in the Rural Development mission area).

Solicitation Opportunity Title: Repowering Assistance Program.

Announcement Type: Notification of Solicitation of Applications.

Catalog of Federal Domestic Assistance (CFDA) Number. The CFDA number for this Notice is 10.866.

Dates: To receive funding consideration, applications must be received in the USDA Rural Business-Cooperative Service, Energy Division no later than 4:30 p.m. Eastern Daylight Time on October 24, 2016. Any application received after 4:30 p.m. Eastern Daylight Time on October 24, 2016, will not compete for funds announced in this Notice.

Availability of Notice and Rule. This Notice and the interim rule for the Repowering Assistance Program are available on the USDA Rural Development Web site at *http://www.rd.usda.gov/programs-services/repowering-assistance-program* and at *http://www.rd.usda.gov/newsroom.*

I. Funding Opportunity Description

A. *Purpose of the Program.* The purpose of this program is to provide financial incentives to biorefineries in existence on or before June 18, 2008 (the date of the enactment of the Food, Conservation, and Energy Act of 2008) to replace the use of fossil fuels used to produce heat or power at their facilities by installing new systems that use renewable biomass, or to produce new energy from renewable biomass.

B. *Statutory Authority.* This Program is authorized under 7 U.S.C. 8104. Regulations are contained in 7 CFR part 4288, subpart A and are incorporated by reference.

C. *Definition of Terms.* The definitions applicable to this Notice are published at 7 CFR 4288.2.

D. *Application Awards.* The Agency will review, evaluate, and award applications received in response to this Notice based on the provisions found in 7 CFR part 4288, subpart A.

II. Award Information

A. Available Funds. This Notice is a solicitation for applications that will be funded using budget authority provided by the Agricultural Act of 2014 (Pub. L. 113–79) and available under current law.

B. Number of Payments. The number of payments will depend on the number of participating biorefineries.

C. Amount of Payments. The Agency will determine the amount of payments to be made to a biorefinery in accordance with its regulations at 7 CFR part 4288, subpart A, which take into consideration the percentage reduction in fossil fuel used by the biorefinery (including the quantity of fossil fuels a renewable biomass system is replacing) and the cost and cost-effectiveness of the renewable biomass system.

D. Payment Limitations. There is no minimum payment amount that an individual biorefinery can receive. The maximum amount an individual biorefinery can receive under this Notice is 50 percent of total eligible project costs up to a maximum of $1 million.

E. Project Costs. Eligible project costs, in accordance with 7 CFR 4288.11, will be only for project related construction costs for repowering improvements associated with the equipment, installation, engineering, design, site plans, associated professional fees, permits and financing fees. Any project costs incurred by the applicant prior to application for payment assistance under this Notice will be ineligible for payment assistance.

F. Type of Instrument. Payment agreement.

III. Eligibility Information

A. Eligible Applicants. Applicant eligibility requirements are found in 7 CFR 4288.10. Among other things, to be eligible for this program, an applicant must be a biorefinery that has been in existence on or before June 18, 2008, and will utilize renewable biomass to replace fossil fuel for repowering the biorefinery.

B. Ineligible Projects. In accordance with 7 CFR 4288.10(b), a project is not eligible under this Notice if it is using feedstocks for repowering that are feed grain commodities that received benefits under Title I of the Food, Conservation, and Energy Act of 2008. Projects that do not score at least 5 points under the 7 CFR 4288.21(b) process, the minimum number of points for cost-effectiveness and percentage of reduction of fossil fuel used, will be deemed ineligible.

IV. Multiple Submissions

In accordance with 7 CFR 4288.10(a)(2), corporations and entities with more than one biorefinery can submit an application for only one of their biorefineries. However, if a corporation or entity has multiple biorefineries located at the same location, the entity may submit an application that covers such biorefineries provided the heat and power used in the multiple biorefineries are centrally produced.

V. Scoring Advice

A. Cost Effectiveness. To be eligible and meet the minimum scoring criteria, the project must have a simple payback period of no more than 10 years (*i.e.*, must be awarded at least five points for cost-effectiveness under 7 CFR 4288.21(b)(1)).

B. Percentage of Reduction of Fossil Fuel Used. To be eligible and meet the minimum scoring criteria, the applicant must demonstrate that the repowering project has an anticipated annual reduction in fossil fuel use of at least 40 percent (*i.e.*, the application must be awarded at least five points for percentage of reduction of fossil fuel used under 7 CFR 4288.21(b)(2)).

VI. Project Financing

The applicant must demonstrate that it has sufficient funds or has obtained commitments for sufficient funds to complete the repowering project, taking into account the amount of the payment request in the application.

VII. Application and Submission Information

A. To Request Applications. Application forms are available from the USDA Rural Development State Office, State Energy Coordinator, and the Agency Web site found at *http://forms.sc.egov.usda.gov.* Follow instructions on the Agency Web site for obtaining the application and forms. *http://www.rd.usda.gov/programs-services/repowering-assistance-program.*

B. Content and Form of Submission. Applicants must submit a signed original and one copy of an application containing all the information specified in 7 CFR 4288.20(b) and (c).

C. Submission Dates and Times. Applications to participate in this program must be submitted between July 25, 2016 and October 24, 2016. Applications received after 4:30 p.m. Eastern Daylight Time October 24, 2016, regardless of their postmark, will not be considered by the Agency for funding consideration.

D. Where to Submit. Applications shall be sent to the Repowering Assistance Program at 1400 Independence Avenue SW., Room 6901–S, Washington DC, 20150. Please note that regular mail delivery, or courier delivery must be coordinated with the Agency in order for the proposal to be delivered by the date.

VIII. Application Review and Selection Information

The Agency will evaluate projects based on the cost, cost-effectiveness, and capacity of projects to reduce fossil fuels used.

A. Review. The Agency will review applications submitted under this Notice in accordance with 7 CFR 4288.21(a).

B. Scoring. The Agency will score applications submitted under this Notice in accordance with 7 CFR 4288.21(b).

C. Ranking and Selecting Applications. The Agency will consider the score an application has received compared to the scores of other applications, with higher scoring applications receiving first consideration for payments. Using the application scoring criteria point values specified in 7 CFR 4288.21, the Agency will select applications for payments.

D. Availability of Funds. As applications are funded, if insufficient funds remain to pay the next highest scoring application, the Agency may elect to pay a lower scoring application. Before this occurs, the Agency will provide the applicant of the higher scoring application the opportunity to reduce the amount of its payment request to the amount of funds available. If the applicant agrees to lower its payment request, it must certify that the purposes of the project can be met, and the Agency must determine the project is feasible at the lower amount.

IX. Administration Information

A. Notice of Eligibility. The provisions of 7 CFR 4288.23 apply to this Notice. These provisions include notifying an applicant determined to be eligible for participation and notifying an applicant determined to be ineligible, including their application score and ranking and the score necessary to qualify for payments.

B. Administrative and National Policy Requirements.

(1) *Review or Appeal Rights.* A person may seek a review of an Agency adverse decision or appeal to the National Appeals Division as provided in 7 CFR 4288.3.

(2) *Compliance With Other Laws and Regulations.* The provisions of 7 CFR 4288.4 apply to this Notice, which includes requiring participating biorefineries to be in compliance with other applicable Federal, State, and local laws.

(3) *Oversight and Monitoring.* The provisions of 7 CFR 4288.5(a) and (b) apply to this Notice, which includes the right of the Agency to verify all payment applications and subsequent payments and the requirement that each biorefinery must make available, at one place at all reasonable times for examination by the Agency, all books, documents, papers, receipts, payroll records, and bills of sale adequate to identify the purposes for which, and the manner in which, funds were expended for all eligible project costs for a period of not less than 3 years from the final payment date.

(4) *Reporting.* Upon completion of the repowering project funded under this Notice, the biorefinery must submit a report, in accordance with 7 CFR 4288.5(c), to the Agency annually for the first 3 years after completion of the project. The reports are to be submitted as of October 1 of each year.

(5) *Payment Provisions.* Fiscal Year (FY) 2016 payments will be made according to the provisions specified in 7 CFR 4288.13(b) and (c) and in 7 CFR 4288.24.

(6) *Exception Authority.* The provisions of 7 CFR 4288.7 apply to this Notice.

(7) *Succession and Control of Facilities and Production.* The provisions of 7 CFR 4288.25 apply to this Notice.

C. Environmental Review. All recipients under this Notice are subject to the requirements of 7 CFR part 1970.

X. Agency Contacts

For further information about this Notice, please contact Fred Petok, USDA, Rural Business—Cooperative Service, Energy Division, 1400 Independence Avenue SW., Room 6868, STOP 3225, Washington, DC 20250–3225. Telephone: 202–690–0784. Email: *frederick.petok@wdc.usda.gov.*

XI. Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form (PDF), found online at *http://www.ascr.usda.gov/complaint_filing_cust.html*, or at any USDA office, or call (866) 632–9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410, by fax (202) 690–7442 or email at *program.intake@usda.gov.*

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Persons with disabilities, who wish to file a program complaint, please see information above on how to contact us by mail directly or by email. If you require alternative means of communication for program information (*e.g.*, Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Dated: July 18, 2016.

Samuel H. Rikkers,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2016–17485 Filed 7–22–16; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–982]

Utility Scale Wind Towers from the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding its administrative review of the countervailing duty (CVD) order on utility scale wind towers (wind towers) from the People's Republic of China (PRC) for the period January 1, 2015, through December 31, 2015.

DATES: Effective July 25, 2016.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4793.

SUPPLEMENTARY INFORMATION:

Background

The Department initiated an administrative review of the CVD order on wind towers from the PRC with respect to 50 companies for the period January 1, 2015, through December 31, 2015, based on a request by the petitioner, the Wind Tower Trade Coalition (WTTC).[1] On July 6, 2016, WTTC timely withdrew its request for an administrative review of all 50 companies.[2] No other party requested a review.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review in whole or in part, if the party that requested a review withdraws its request within 90 days of the date of publication of notice of initiation of the requested review. In this case, WTTC withdrew its request for review within the 90-day deadline, and no other party requested an administrative review of the CVD order. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review in its entirety.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess CVDs on all entries of wind towers from the PRC during the period January 1, 2015, through December 31, 2015, at rates equal to the cash deposit of estimated CVDs required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice.

Notifications

This notice serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO, in accordance with 19 CFR 351.305.(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: July 18, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–17562 Filed 7–22–16; 8:45 am]

BILLING CODE 3510–DS–P

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[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 20324 (April 7, 2016) (*Initiation Notice*). In the *Initiation Notice*, we inadvertently listed only 45 companies; however, WTTC requested a review of 50 companies. *See* Letter from WTTC regarding "Request for Administrative Review" (February 23, 2016).

[2] *See* Letter from the WTTC regarding "Withdrawal of Request for Administrative Review" (July 6, 2016).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–037]

Certain Biaxial Integral Geogrid Products From the People's Republic of China: Amended Preliminary Results of Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On June 24, 2016, the Department of Commerce ("Department") published in the **Federal Register** the *Preliminary Determination* of the countervailing duty ("CVD") investigation on certain biaxial integral geogrid products ("geogrids") from the People's Republic of China ("PRC"). The Department is amending the *Preliminary Determination* of the investigation to correct three ministerial errors.

DATES: Effective June 24, 2016.

FOR FURTHER INFORMATION CONTACT: Bob Palmer or Ryan Mullen, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–9068 or (202) 482–5260, respectively.

SUPPLEMENTARY INFORMATION: On June 24, 2016, the Department published in the **Federal Register** the *Preliminary Determination* of the CVD investigation of geogrids from the PRC.[1] On June 24, 2016, and June 27, 2016, respectively, Taian Modern Plastic Co., Ltd. ("Taian Modern") and BOSTD Geosynthetics Qingdao Ltd. ("BOSTD Qingdao") alleged that the Department made significant ministerial errors in the *Preliminary Determination.*[2]

Significant Ministerial Error

A ministerial error, as defined in section 751(h) of the Tariff Act of 1930, as amended ("the Act"), includes "errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial."[3] With respect to preliminary determinations, 19 CFR 351.224(e) provides that the Department "will analyze any comments received and, if appropriate, correct any significant ministerial error by amending the preliminary determination . . ." A significant ministerial error is defined as an error, the correction of which, singly or in combination with other errors, would result in: (1) A change of at least five absolute percentage points in, but not less than 25 percent of, the countervailable subsidy rate calculated in the original (erroneous) preliminary determination; or (2) a difference between a countervailable subsidy rate of zero (or *de minimis*) and a countervailable subsidy rate of greater than *de minimis* or vice versa.[4] As explained further in the Ministerial Error Memorandum issued concurrently with this Notice,[5] and pursuant to 19 CFR 351.224(e) and (g), the Department is amending the *Preliminary Determination* to reflect the correction of three ministerial errors made in the calculation of the subsidy rates for Taian Modern and BOSTD Qingdao.

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[1] *See Countervailing Duty Investigation of Certain Biaxial Integral Geogrid Products From the People's Republic of China: Preliminary Determination and Alignment of Final Determination With Final Antidumping Determination*, 81 FR 41292 (June 24, 2016) ("*Preliminary Determination*").

[2] On June 30, 2016 the Department received comments submitted by Tensar Corporation in reply to the ministerial allegations of Taian Modern and BOSTD Qingdao. However, in accordance with 19 CFR 351.224(c)(3), these reply comments were rejected from the record. *See* Letter from Catherine Bertrand, Program Manager, Office V, "Certain Biaxial Integral Geogrids Products from the People's Republic of China: Tensar Corporation's Ministerial Reply Comments" (July 5, 2016).

[3] *See also* 19 CFR 351.224(f).

Ministerial Error Allegations

Taian Modern alleges that, although the Department stated in the *Preliminary Determination* that it was using total sales as the denominator in calculating the subsidy rate because the programs were considered domestic subsidies, the Department actually used only Taian Modern's sales of geogrids as the denominator in its calculations.

After comparing the ministerial error allegations against record evidence, in accordance with section 751(h) of the Act, we agree that we inadvertently used only Taian Modern's sales of geogrids in our calculation instead of total sales. This resulted in a significant error within the meaning of section 735(e) of the Act and 19 CFR 351.224(g). We have corrected this error in this notice.

BOSTD Qingdao alleges that in the *Preliminary Determination,* the Department stated that it would add to the purchase price for each individual *domestic* purchase the reported delivery charge and VAT paid to obtain a total amount paid. However, the Department unintentionally included BOSTD Qingdao's purchases of imported (*e.g.,* non-Chinese origin) polypropylene in the less-than-adequate-remuneration ("LTAR") calculation.

Next, with respect to the electricity for LTAR calculation, BOSTD Qingdao alleges that the Department made an error in addition. In the Department's calculation worksheet, the benefit totals from each of the various electricity categories was hardcode rather than a sum formula. The actual sum of BOSTD Qingdao's electricity benefit is considerably less.

After comparing the ministerial error allegations against record evidence, in accordance with section 751(h) of the Act, we agree with BOSTD Qingdao that we inadvertently included BOSTD Qingdao's purchases of imported polypropylene in the LTAR calculation. We also agree that we miscalculated the benefit total of the various electricity categories. These errors resulted in a significant error within the meaning of section 735(e) of the Act and 19 CFR 351.224(g). We have corrected these errors in this notice.

Amended Preliminary Determination

We are amending the preliminary countervailing duty rates for Taian Modern and BOSTD Qingdao pursuant to 19 CFR 351.224(e). In addition, the preliminary "All-Others" Rate was based on the simple average of the subsidy rates calculated for Taian Modern and BOSTD Qingdao. Thus, we are also amending the "All-Others" rate to account for the change in Taian Modern's and BOSTD Qingdao's subsidy rate. Specifically, we are calculating the simple average of the corrected subsidy rate for Taian Modern and BOSTD Qingdao. Further, correcting Taian Modern's "Provision of Polypropylene for LTAR" error and BOSTD Qingdao's "Provision of Electricity for LTAR" calculation leads to a change in the adverse facts available rate.[6] The revised subsidy rates are as follows:

Company	Subsidy rate
BOSTD Geosynthetics Qingdao Ltd. and Beijing Orient Science & Technology Development Co., Ltd	5.19
Taian Modern Plastic Co., Ltd	20.79
All-Others	12.99
Chengdu Tian Road Engineering Materials Co., Ltd.*	119.13
Chongqing Jiudi Reinforced Soil Engineering Co., Ltd.*	119.13
CNBM International Corporation*	119.13
Dezhou Yaohua Geosynthetics Ltd.*	119.13
Dezhou Zhengyu Geosynthetics Ltd.*	119.13
Hongye Engineering Materials Co., Ltd.*	119.13
Hubei Nete Geosynthetics Ltd.*	119.13
Jiangsu Dingtai Engineering Material Co., Ltd.*	119.13
Jiangsu Jiuding New Material Ltd.*	119.13
Lewu New Material Ltd.*	119.13
Nanjing Jinlu Geosynthetics Ltd.*	119.13
Nanjing Kunchi Composite Material Ltd.*	119.13
Nanyang Jieda Geosynthetics Co., Ltd.*	119.13
Qingdao Hongda Plastics Corp.*	119.13
Shandong Dexuda Geosynthetics Ltd.*	119.13
Shandong Haoyang New Engineering Materials Co., Ltd.*	119.13
Shandong Tongfa Glass Fiber Ltd.*	119.13
Shandong Xinyu Geosynthetics Ltd.*	119.13
Tai'an Haohua Plastics Co., Ltd.*	119.13
Taian Hengbang Engineering Material Co., Ltd.*	119.13
Taian Naite Geosynthetics Ltd.*	119.13
Taian Road Engineering Materials Co., Ltd.*	119.13
Tenax*	119.13

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[4] *See* 19 CFR 351.224(g) (1), (2).

[5] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from James Doyle, Director, Office V, through Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled, "Countervailing Duty Investigation of Certain Biaxial Integral Geogrid Products from the People's Republic of China: Allegation of Significant Ministerial Errors in the Preliminary Determination," dated concurrently with this notice ("Ministerial Error Memorandum"). This memorandum is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building.

[6] *See* Ministerial Error Memorandum for the revised adverse facts available rate.

Company	Subsidy rate
Hengshui Zhongtiejian Group Co.*	119.13
Qingdao Sunrise Dageng Import and Export Co., Ltd.*	119.13

* Non-cooperative company to which an adverse facts available rate is being applied. *See Countervailing Duty Investigation of Certain Biaxial Integral Geogrid Products From the People's Republic of China: Preliminary Determination and Alignment of Final Determination With Final Anti-dumping Determination,* 81 FR 41292 (June 24, 2016) and accompanying Preliminary Decision Memo at "Use of Facts Otherwise Available and Adverse Inferences."

These amended preliminary results are published in accordance with sections 751(h) and 777(i)(1) of the Act.

Dated: July 19, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–17565 Filed 7–22–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Department of Commerce Trade Finance Advisory Council Establishment

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of establishment of the U.S. Department of Commerce Trade Finance Advisory Council.

SUMMARY: The Secretary of Commerce (Secretary), having determined that it is in the public interest in connection with the performance of duties imposed on the Department of Commerce by law, and with the concurrence of the General Services Administration, announces establishment of the U.S. Department of Commerce Trade Finance Advisory Council. This advisory committee will advise the Secretary on the development of strategies and programs that would help expand access to trade finance for U.S. exporters. The establishment of this federal advisory committee is necessary to provide input to the Secretary regarding the challenges faced by U.S. exporters in accessing capital, innovative solutions that can address these challenges, and recommendations on strategies that can expand access to finance and educate U.S. exporters on available resources. This notice also requests nominations for membership.

DATES: Nominations for members must be received on or before 5 p.m. EDT Monday, August 22, 2016.

ADDRESSES: All nominations should be submitted to the Executive Secretary, Advisory Council on Trade Finance to: Ericka Ukrow, Office of Finance and Insurance Industries, U.S. Department of Commerce Trade Finance Advisory Council, Room 18002, 1401 Constitution Avenue NW., Washington, DC 20230, or via email at: *Ericka.Ukrow@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Ericka Ukrow, Office of Finance and Insurance Industries, Room 18002, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0405, email: *Ericka.Ukrow@trade.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

The U.S. Department of Commerce Trade Finance Advisory Council (TFAC) is established in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App., to advise the Secretary on matters relating to private sector trade financing for U.S. exporters. The Department affirms that the creation of the TFAC is necessary and in the public interest.

The Department of Commerce, International Trade Administration, Office of Finance and Insurance Industries, is accepting nominations for membership on the TFAC. The TFAC functions solely as an advisory committee. The TFAC shall advise the Secretary in identifying effective ways to help expand access to finance for U.S. exporters, especially small- and medium-sized enterprises (SMEs), and their foreign buyers.

The TFAC shall provide a necessary forum to facilitate the discussion between a diverse group of stakeholders such as banks, non-bank financial institutions, other trade finance related organizations, and exporters to gain a better understanding regarding current challenges facing U.S. exporters in accessing finance.

The TFAC shall draw upon the experience of its members in order to obtain ideas and suggestions for innovative solutions to these challenges.

The TFAC shall develop recommendations on programs or activities that the Department of Commerce could incorporate as part of its export promotion and trade finance education efforts.

The TFAC shall report to the Secretary on its activities and recommendations. In creating its reports, the TFAC should: (1) Evaluate current credit conditions and specific financing challenges faced by U.S. exporters, especially SMEs, and their foreign buyers, (2) examine other noteworthy issues raised by stakeholders represented by the membership, (3) identify emerging financing sources that would address these gaps, and (4) recommend specific activities by which these recommendations could be incorporated and implemented.

II. Structure, Membership, and Operation

The TFAC shall consist of no more than twenty members appointed by the Secretary. Members may be drawn from:

- U.S. companies that are exporters of goods and services;
- U.S. commercial banks that provide trade finance products, cross-border payment services, or foreign exchange solutions;
- Non-bank U.S. financial institutions that provide trade finance products, cross-border payment services, or foreign exchange solutions;
- Associations that represent: (a) U.S. exporters and SMEs; and (b) U.S. commercial banks or non-bank financial institutions or other professionals that facilitate international trade transactions;
- U.S. companies or entities whose business includes trade-finance-related activities or services;
- U.S. scholars, academic institutions, or public policy organizations with expertise in global business, trade finance, and international banking related subjects; and
- Economic development organizations and other U.S. regional, state and local governmental and non-governmental organizations whose missions or activities include the analysis, provision, or facilitation of trade finance products/services.

Membership shall include a broad range of companies and organizations in terms of products and services, company size, and geographic location of both the source and destination of trade finance. Members will be selected based on their ability to carry out the objectives of the TFAC, in accordance with applicable Department of Commerce guidelines, in a manner that ensures that the TFAC is balanced in terms of points of view and demographics. Priority may be given to candidates who have executive-level (Chief Executive Officer, Executive Chairman, President, or comparable level of responsibility) experience.

Members, with the exception of those from academia and public policy organizations, serve in a representative capacity, representing their own views and interests and those of their particular sector, not as Special Government Employees. The members from academia and public policy organizations serve as experts and therefore are Special Government Employees (SGEs), pursuant to 18 U.S.C. 202, and will be required to comply with certain ethics laws and rules, including filing a Confidential Financial Disclosure form. Additionally, a member serving as an expert must not be a Federally Registered Lobbyist.

Prospective nominees should designate the capacity in which they are applying to serve and identify either their area of expertise or the U.S. industry sector they wish to represent. Members of the TFAC will not be compensated for their services or reimbursed for their travel expenses. Appointments to the TFAC shall be made without regard to political affiliation.

Each member shall be appointed for a term of two years and will serve at the pleasure of the Secretary. The Secretary may at his/her discretion reappoint any member to an additional term or terms, provided that the member proves to work effectively on the TFAC and his/her knowledge and advice are still needed.

The TFAC chair and vice chair or vice chairs shall be selected from the members of the TFAC by the Assistant Secretary for Industry & Analysis after consulting with the members. Their term of service will not exceed the duration of the current charter term and they may be reselected for additional periods should the charter be renewed and should they remain on the TFAC.

III. Compensation

Members will not be paid for their engagement in the performance of their duties as members of the Council. Members will not receive per diem and travel expenses.

IV. Nomination

The Department of Commerce will consider nominations of all qualified individuals to ensure that the TFAC includes representatives of the viewpoints and members with the areas of subject matter expertise noted above (see "Structure, Membership and Operation"). Individuals may nominate themselves or other individuals, and a company, institution, trade association, or organization may nominate a qualified representative for membership on the TFAC.

Nominations shall state that the nominee is willing to serve as a member of the TFAC. All nomination packages should include the following information for each nominee: (1) Name and title of the individual requesting consideration. (2) Nominations shall state that the nominee is willing to serve as a member of the TFAC. The potential candidate's personal resume and short biography (less than 300 words). (3) A brief statement describing how the potential candidate will contribute to the work of the TFAC based on his/her unique experience and perspective (not to exceed 100 words). (4) All relevant contact information, including mailing address, fax, email, phone number, and support staff information where relevant. (5) An affirmative statement that the potential candidate meets all eligibility criteria, including an affirmative statement that the potential candidate is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.

In addition, for a potential candidate to serve in a representative capacity: (a) A sponsor letter on the sponsoring entity's letterhead containing a brief statement of why the potential candidate should be considered for membership on the TFAC. This sponsor letter should also address the potential candidate's experience and leadership related to trade finance; (b) A brief description of the company, institution, trade association, or organization to be represented and its business activities and export market(s) served, if applicable; (c) Information regarding the ownership and control of the sponsoring entity, including the stock holdings as appropriate; and (d) The sponsoring entity's size (number of employees and annual sales), place of incorporation, product or service line, major markets in which the entity operates, and the entity's export or import experience.

In addition, for a potential candidate to serve as an expert: A statement that the potential candidate is not a Federally registered lobbyist and that the potential candidate understands that, if appointed, the potential candidate will not be allowed to continue to serve as a Committee member if the potential candidate becomes a Federally registered lobbyist.

Dated: July 19, 2016.

Paul Thanos,

Director, Office of Finance and Insurance Industries.

[FR Doc. 2016–17436 Filed 7–22–16; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–833, C–570–027, C–533–864, C–580–879]

Certain Corrosion-Resistant Steel Products From India, Italy, Republic of Korea and the People's Republic of China: Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce ("Department") and the International Trade Commission ("ITC"), the Department is issuing a countervailing duty order on certain corrosion-resistant steel products ("corrosion-resistant steel") from India, Italy, Republic of Korea ("Korea"), and the People's Republic of China ("PRC").

DATES: Effective July 25, 2016.

FOR FURTHER INFORMATION CONTACT: Myrna Lobo at (202) 482–2371 (the Republic of Korea); Emily Halle at (202) 482–0176 (the People's Republic of China); Matt Renkey at (202) 482–2312 (India); Robert Palmer at (202) 482–9068 (Italy); AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 705(d) of the Tariff Act of 1930, as amended ("Act"), on June 2, 2016, the Department published its affirmative final determinations that countervailable subsidies are being provided to producers and exporters of corrosion-resistant steel from India, Italy, Korea, and the PRC.[1] On July 15,

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[1] *See Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From Italy: Final Affirmative Determination and Final Affirmative Critical Circumstances, in Part,* 81 FR 35326 (June 2, 2016); *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part,* 81 FR 35308 (June 2, 2016); *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From India: Final Affirmative Determination,* 81 FR

Continued

2016, the ITC notified the Department of its affirmative determinations that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(ii) of the Act by reason of subsidized imports of subject merchandise from India, Italy, Korea, and the PRC, and its determination that critical circumstances do not exist with respect to imports of subject merchandise from these countries that are subject to the Department's affirmative critical circumstances finding.[2]

Scope of the Order

The products covered by this investigation are certain corrosion-resistant steel products. For a complete description of the scope of the order, *see* Appendix I.

Countervailing Duty Order

In accordance with sections 705(b)(1)(A)(i) and 705(d) of the Act, the ITC has notified the Department of its final determinations that the industry in the United States producing corrosion-resistant steel is materially injured by reason of subsidized imports of corrosion-resistant steel from India, Italy, Korea, and the PRC, and that critical circumstances do not exist with respect to imports of subject merchandise from Italy, Korea, and the PRC that are subject to the Department's affirmative critical circumstances finding, in part. Therefore, in accordance with section 705(c)(2) of the Act, we are publishing these countervailing duty orders.

As a result of the ITC's final determinations, in accordance with section 706(a) of the Act, the Department will direct U.S. Customs and Border Protection ("CBP") to assess, upon further instruction by the Department, countervailing duties on unliquidated entries of corrosion-resistant steel from India, Italy, Korea, and the PRC entered, or withdrawn from warehouse, for consumption on or after November 6, 2015, the date on which the Department published its preliminary countervailing duty determinations in the **Federal Register**,[3] and before March 4, 2016, the date on which the Department instructed CBP to discontinue the suspension of liquidation in accordance with section 703(d) of the Act. Section 703(d) of the Act states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Therefore, entries of corrosion-resistant steel made on or after March 4, 2016, and prior to the date of publication of the ITC's final determination in the **Federal Register** are not liable for the assessment of countervailing duties due to the Department's discontinuation, effective March 4, 2016, of the suspension of liquidation.

Continuation of Suspension of Liquidation

In accordance with section 706 of the Act, the Department will direct CBP to reinstitute the suspension of liquidation of corrosion-resistant steel from India, Italy, Korea, and the PRC, effective on the date of publication of the ITC's notice of final determinations in the **Federal Register**, and to assess, upon further instruction by the Department pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise, except for subject merchandise entered by the *de minimis* companies from Italy (Acciaieria Arvedi S.p.A., Finarvedi S.p.A., Arvedi Tubi Acciaio S.p.A., Euro-Trade S.p.A., Siderurgica Triestina Srl., Marcegaglia S.p.A. and Marfin S.p.A.) and the de minimis companies from Korea (Union Steel Manufacturing Co. Ltd/Dongkuk Steel Mill Co., Ltd.). These exclusions will apply only to subject merchandise both produced and exported by *de minimis* companies from Italy (Acciaieria Arvedi S.p.A., Finarvedi S.p.A., Arvedi Tubi Acciaio S.p.A., Euro-Trade S.p.A., Siderurgica Triestina Srl., Marcegaglia S.p.A. and Marfin S.p.A.) and the de minimis companies from Korea (Union Steel Manufacturing Co. Ltd/Dongkuk Steel Mill Co., Ltd.). On or after the date of publication of the ITC's final injury determinations in the **Federal Register**, CBP must require,[4] at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the rates noted below:

	Subsidy rate (percent)
Exporter/Producer from India:	
JSW Steel Limited and JSW Steel Coated Products Limited	29.49
Uttam Galva Steels Limited and Uttam Value Steels Limited	8.00
All-Others	18.73
Exporter/Producer from Italy:	
Acciaieria Arvedi S.p.A., Finarvedi S.p.A., Arvedi Tubi Acciaio S.p.A., Euro-Trade S.p.A., and Siderurgica Triestina Srl., collectively, the Arvedi Group	[5]0.48
Marcegaglia S.p.A. and Marfin S.p.A., the Marcegaglia Group	[6]0.07
Ilva S.p.A	38.51
All-Others	13.02
Exporter/Producer from Korea:	
Union Steel Manufacturing Co. Ltd/Dongkuk Steel Mill Co., Ltd	[7]0.72
Dongbu Steel Co., Ltd./Dongbu Incheon Steel Co., Ltd	1.19

35323 (June 2, 2016); and *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From the Republic of Korea: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part,* 81 FR 35310 (June 2, 2016).

[2] *See* Letter to Christian Marsh, Deputy Assistant Secretary of Commerce for Enforcement and Compliance, from Irving A. Williamson, Chairman of the U.S. International Trade Commission, regarding certain corrosion-resistant steel products from India, Italy, Korea, the PRC, and Taiwan (July 15, 2016) ("ITC Letter"); *see also* Corrosion-Resistant Steel Products from India, Italy, Korea, the PRC, and Taiwan, USITC Investigation Nos. 701–TA–534–537 and 731–TA–1274–1278 (Final), USITC Publication 4620, (July 2016).

[3] *See Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From Italy: Preliminary Affirmative Determination,* 80 FR 68839 (November 6, 2015), *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From the People's Republic of China: Preliminary Affirmative Determination,* 80 FR 68843 (November 6, 2015), *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From the Republic of Korea: Preliminary Affirmative Determination,* 80 FR 68842 (November 6, 2015), *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From India: Preliminary Affirmative Determination,* 80 FR 68854 (November 6, 2015), (collectively, "*Preliminary Determinations*"). *See also Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products From India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances,* 80 FR 68504 (November 5, 2015) ("*Preliminary Critical Circumstances*").

[4] With the exception of those companies whose net subsidy was *de minimis,* and hence, are excluded from this order. These exclusions will apply only to subject merchandise both produced and exported by those companies identified here whose net subsidy was *de minimis.*

	Subsidy rate (percent)
All-Others	1.19
Exporter/Producer from the PRC:	
Yieh Phui (China) Technomaterial Co., Ltd	39.05
Angang Group Hong Kong Company Ltd	241.07
Baoshan Iron & Steel Co., Ltd	241.07
Duferco S.A., Hebei Iron & Steel Group, and Tangshan Iron and Steel Group Co., Ltd	241.07
Changshu Everbright Material Technology	241.07
Handan Iron & Steel Group	241.07
All-Others	39.05

Critical Circumstances

Withregard to the ITC's negative critical circumstances determination on imports of corrosion-resistant steel from Italy, Korea, and the PRC, we will instruct CBP to lift suspension and to refund any cash deposits made to secure the payment of estimated countervailing duties with respect to entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after August 8, 2015 (*i.e.,* 90 days prior to the date of the publication of the CVD *Preliminary Determinations*), but before November 6, 2015 (*i.e.,* the date of publication of the CVD *Preliminary Determinations*).

Notifications to Interested Parties

This notice constitutes the countervailing duty orders with respect to corrosion-resistant steel from Italy, India, Korea, and the PRC pursuant to section 706(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B8024 of the main Commerce Building, for copies of an updated list of countervailing duty orders currently in effect.

These orders are issued and published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

Dated: July 18, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

The products covered by this order are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.,* in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.,* products which have been "worked after rolling" (*e.g.,* products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this order are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels and high strength low alloy ("HSLA") steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels ("AHSS") and Ultra High Strength Steels ("UHSS"), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this order unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this order:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin free steel"), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;
- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and
- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%–60%–20% ratio.

The products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

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[5] *De minimis.*

[6] *Id.*

[7] *Id.*

The products subject to the order may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

[FR Doc. 2016–17563 Filed 7–22–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–863, A–475–832, A–570–026, A–580–878, A–583–856]

Certain Corrosion-Resistant Steel Products From India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the "Department") and the International Trade Commission (the "ITC"), the Department is issuing antidumping duty orders on certain corrosion-resistant steel products from India, Italy, the People's Republic of China ("PRC"), the Republic of Korea ("Korea"), and Taiwan. In addition, the Department is amending its final determinations of sales at less-than-fair-value ("LTFV") from India and Taiwan, as a result of ministerial errors.

DATES: Effective July 25, 2016.

FOR FURTHER INFORMATION CONTACT: Julia Hancock or Susan Pulongbarit at (202) 482–1394 and (202) 482–4031, respectively (Italy), Kabir Archuletta at (202) 482–2593 (India); Elfi Blum or Lingjun Wang (Korea) at (202) 482–0197 or (202) 482–2316, respectively; Nancy Decker or Andrew Huston at (202) 482–0196 or (202) 482–4261, respectively (PRC); or Shanah Lee or Paul Stolz at (202) 482–6386 and (202) 482–4474, respectively (Taiwan), AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the "Act"), and 19 CFR 351.210(c), on June 2, 2016, the Department published its affirmative final determinations in the LTFV investigations of certain corrosion-resistant steel products from India, Italy, Korea, the PRC, and Taiwan.[1] On July 15, 2016, the ITC notified the Department of its affirmative determination that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act, by reason of the LTFV imports of certain corrosion-resistant steel products from India, Italy, Korea, the PRC, and Taiwan, and its determination that critical circumstances do not exist with respect to imports of subject merchandise from Italy, Korea, the PRC, and Taiwan that are subject to the Department's affirmative critical circumstances findings.[2]

Scope of the Orders

The products covered by these orders are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.,* in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.,* products which have been "worked after rolling" (*e.g.,* products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of these orders are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels and high strength low alloy (HSLA) steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

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[1] *See Certain Corrosion-Resistant Steel Products from India: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances,* 81 FR 35329 (June 2, 2016) ("*India Final*"); *Certain Corrosion-Resistant Steel Products from Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part,* 81 FR 35320 (June 2, 2016) ("*Italy Final*"); *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances,* 81 FR 35303 (June 2, 2016) ("*Korea Final*"); *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstances Determination, in Part,* 81 FR 35316 (June 2, 2016) ("*PRC Final*"); and *Certain Corrosion-Resistant Steel Products from Taiwan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part,* 81 FR 35313 (June 2, 2016) ("*Taiwan Final*").

[2] *See* Letter to Christian Marsh, Deputy Assistant Secretary of Commerce for Enforcement and Compliance, from Irving A. Williamson, Chairman of the U.S. International Trade Commission, regarding certain corrosion-resistant steel products from India, Italy, Korea, the PRC, and Taiwan (July 15, 2016) ("ITC Letter"); *see also Corrosion-Resistant Steel Products from India, Italy, Korea, the PRC, and Taiwan,* USITC Investigation Nos. 701–TA–534–537 and 731–TA–1274–1278 (Final), USITC Publication 4620 (July 2016).

Furthermore, this scope also includes Advanced High Strength Steels (AHSS) and Ultra High Strength Steels (UHSS), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the orders if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of these orders unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of these orders:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (“terne plate”), or both chromium and chromium oxides (“tin free steel”), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;
- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and
- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The products subject to the orders are currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the orders may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the orders is dispositive.

Amendment to India Final Determination

On May 31, 2016, JSW Steel Ltd. and JSW Steel Coated Products Limited (collectively “JSW”) alleged that the Department made ministerial errors in the *India Final.*[3] A ministerial error is defined as an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.[4]

The Department reviewed the record and agrees that three of the errors referenced in JSW's allegation constitute ministerial errors within the meaning of 19 CFR 351.224(f).[5] Specifically, the Department used an incorrect variable in the recalculation of JSW's home market inventory carrying costs, transposed two digits in the recalculation of JSW's indirect selling expenses, and neglected to fully adjust JSW's cash deposit rate for export subsidies based on adverse facts available (“AFA”).[6] Pursuant to 19 CFR 351.224(e), the Department is amending the *India Final* to reflect the correction of the ministerial errors described above. Based on our correction, JSW's weighted-average dumping margin decreased from 4.44 percent to 4.43 percent. Although the “all-others” rate is based in part on JSW's dumping margin, the corrections noted above did not have an effect on the all-others rate determined in the *India Final.*[7]

Amendment to Taiwan Final Determination

On June 7, 2016, AK Steel Corporation (“Petitioner”) submitted to the Department a timely allegation that the Department made ministerial errors in the margin calculations in the *Taiwan Final.*[8]

The Department reviewed the record and agrees that the errors referenced in Petitioner's allegation constitute ministerial errors within the meaning of 19 CFR 351.224(f).[9] Specifically, as a result of programming errors in the application of partial AFA to certain control numbers, the Department failed to use the sales quantities to weight average the costs of certain control numbers, the Department failed to use the highest total cost of manufacture as AFA for certain control numbers, and the Department incorrectly applied AFA to certain control numbers.[10] Pursuant to 19 CFR 351.224(e), the Department is amending the *Taiwan Final* to reflect the correction of the ministerial errors described above. Based on our correction, the weighted-average dumping margin for the collapsed entity comprised of Prosperity Tieh Enterprise Company., Ltd., Yieh Phui Enterprise Co., and Synn Industrial Co., Ltd., increased from 3.77 percent to 10.34 percent.[11] In addition, because the “all-others” rate is based on the corrected weighted-average dumping margin, the Department has revised the all-others rate in this amended final determination accordingly.[12]

Antidumping Duty Orders

As stated above, on July 15, 2016, in accordance with sections 735(b)(1)(A)(i) and 735(d) of the Act, the ITC notified the Department of its final determinations in these investigations, in which it found that an industry in the

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[3] *See* Letter to the Secretary of Commerce from JSW “JSW's Ministerial Error Comments in Response to the Department's Final Determination” (May 31, 2016).

[4] *See* section 735(e) of the Act.

[5] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations “Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from India: Allegation of Ministerial Errors in the Final Determination” (July 5, 2016) (“India Ministerial Error Memo”).

[6] *Id.*

[7] *Id.*

[8] *See* Letter to the Secretary of Commerce from Petitioners “Certain Corrosion-Resistant Steel Products From Taiwan: Petitioner's Ministerial Error Comments” (June 7, 2016).

[9] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations “Ministerial Error Memorandum Concerning the Final Determination in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from Taiwan” (July 15, 2016).

[10] *Id.*

[11] *Id.*

[12] *See* the “Estimated Weighted-Average Dumping Margins” section below.

United States is materially injured by reason of imports of certain corrosion-resistant steel products from India, Italy, Korea, the PRC, and Taiwan and that critical circumstances do not exist with respect to imports of subject merchandise from Italy, Korea, the PRC, and Taiwan that are subject to the Department's affirmative critical circumstances findings.[13] Therefore, in accordance with section 735(c)(2) of the Act, the Department is issuing these antidumping duty orders. Because the ITC determined that imports of certain corrosion-resistant steel products from India, Italy, Korea, the PRC, and Taiwan are materially injuring a U.S. industry, unliquidated entries of such merchandise from India, Italy, Korea, the PRC, and Taiwan, entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection ("CBP") to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of certain corrosion-resistant steel products from India, Italy, Korea, the PRC, and Taiwan. Antidumping duties will be assessed on unliquidated entries of certain corrosion-resistant steel products from India, Italy, Korea, the PRC, and Taiwan entered, or withdrawn from warehouse, for consumption on or after January 4, 2016, the date of publication of the preliminary determinations,[14] but will not include entries occurring after the expiration of the provisional measures period and before publication of the ITC's final injury determination as further described below.

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct CBP to continue to suspend liquidation on all relevant entries of certain corrosion-resistant steel products from India, Italy, Korea, the PRC, and Taiwan. These instructions suspending liquidation will remain in effect until further notice.

The Department will also instruct CBP to require cash deposits equal to the amounts as indicated below, which are adjusted for certain countervailable subsidies, where appropriate, as described below. Accordingly, effective on the date of publication of the ITC's final affirmative injury determinations, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit equal to the cash deposit rates listed below.[15] The relevant all-others rates apply to all producers or exporters not specifically listed. For the purpose of determining cash deposit rates, the estimated weighted-average dumping margins for imports of subject merchandise from India, Italy, Korea, and the PRC have been adjusted, as appropriate, for export subsidies found in the final determinations of the companion countervailing duty investigations of this merchandise imported from India, Italy, Korea, and the PRC.[16] Because the Department determined that countervailable subsidies were not provided to producers and exporters of certain corrosion-resistant steel products from Taiwan, we did not adjust the weighted-average dumping margin for export subsidies.[17] In the case of determining cash deposit rates for subject merchandise from the PRC, estimated weighted-average dumping margins were also adjusted, where appropriate, for estimated domestic subsidy pass-through.[18]

Provisional Measures

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to no more than six months. At the request of exporters that account for a significant proportion of certain corrosion-resistant steel products from India, Italy, Korea, the PRC, and Taiwan, the Department extended the four-month period to six months in each case.[19] In the underlying investigations, the Department published the preliminary determinations on January 4, 2016. Therefore, the extended period, beginning on the date of publication of the preliminary determination, ended on July 2, 2016. Furthermore, section 737(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 733(d) of the Act and our practice, the Department will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of certain corrosion-resistant steel products from India, Italy, Korea, the PRC, and Taiwan entered, or withdrawn from warehouse, for consumption after July 3, 2016, the date on which the provisional measures expired, until and through the day preceding the date of publication of the ITC's final injury determinations in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final determination in the **Federal Register**.

Critical Circumstances

With regard to the ITC's negative critical circumstances determination on imports of subject merchandise from Korea, the PRC, and Taiwan, the Department will instruct CBP to lift suspension and to refund any cash deposits made to secure the payment of estimated antidumping duties with respect to entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after October 6, 2015 (*i.e.*, 90 days prior to the date of publication of the preliminary determinations), but before January 4, 2016, (*i.e.*, the date of publication of the preliminary determinations). With regard to the ITC's negative critical circumstances determination on imports of subject merchandise from Italy, the Department will instruct CBP to lift suspension and to refund any cash deposits made to secure payment of estimated antidumping duties with respect to entries of subject merchandise entered, or withdrawn from warehouse, for consumption by one respondent on or after March 4, 2016 (*i.e.,* 90 days prior to the date of publication of the final determination for Italy), but before June 2, 2016, (*i.e.,* the date of publication of the final determination for Italy).[20]

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[13] *See* ITC Letter.

[14] *See Certain Corrosion-Resistant Steel Products from India: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 81 FR 63 (January 4, 2016) ("*India Prelim*"); *Certain Corrosion-Resistant Steel Products from Italy: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 81 FR 69 (January 4, 2016) ("*Italy Prelim*"); *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 81 FR 78 (January 4, 2016) ("*Korea Prelim*"); *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 81 FR 75 (January 4, 2016) ("*PRC Prelim*"); and *Certain Corrosion-Resistant Steel Products from Taiwan: Negative Preliminary Determination of Sales at Less Than Fair Value,* 81 FR 72 (January 4, 2016) ("*Taiwan Prelim*").

[15] *See* section 736(a)(3) of the Act.

[16] *See India Final; Italy Final; Korea Final;* and *PRC Final. See also* section 772(c)(1)(C) of the Act.

[17] *See Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From Taiwan: Final Negative Countervailing Duty Determination,* 81 FR 35299 (June 2, 2016).

[18] *See China Final,* 81 FR at 35318. *See also* section 777A(f) of the Act.

[19] *See India Prelim; Italy Prelim; Korea Prelim; PRC Prelim;* and *Taiwan Prelim.*

Estimated Weighted-Average Dumping Margins

The weighted-average antidumping duty margin percentages and cash deposit rates are as follows:

Exporter or producer	Weighted-average dumping margin (percent) [21]	Cash deposit rate (percent)
India:		
JSW: [22]		
JSW Steel Ltd		
JSW Coated Products Ltd	4.43	0.00
Uttam Galva: [23]		
Uttam Galva Steel Limited		
Uttam Value Steels Limited		
Atlantis International Services Company Ltd		
Uttam Galva Steels, Netherlands, B.V		
Uttam Galva Steels (BVI) Limited	3.05	0.00
All-Others	3.86	0.00
Italy:		
Acciaieria Arvedi S.p.A	12.63	12.63
Marcegalia S.p.A [24]	92.12	92.12
All-Others	12.63	12.48
Korea:		
Dongkuk Steel Mill Co., Ltd./Union Steel Manufacturing Co., Ltd	8.75	8.75
Hyundai Steel Company	47.80	47.79
All-Others	28.28	28.27
PRC:		
Yieh Phui (China) Technomaterial Co., Ltd	209.97	199.43
Jiangyin Zongcheng Steel Co. Ltd	209.97	199.43
Union Steel China	209.97	199.43
PRC-Wide Entity	209.97	199.43
Taiwan:		
Prosperity Tieh Enterprise Co., Ltd., Yieh Phui Enterprise Co., Ltd., and Synn Industrial Co., Ltd [25]	10.34	
All-Others	10.34	

This notice constitutes the antidumping duty orders with respect to certain corrosion-resistant steel products from India, Italy, the PRC, Korea and Taiwan pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

These orders are published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: July 18, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–17557 Filed 7–22–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: West Coast Permit Family of Forms—Southwest.

OMB Control Number: 0648–0204.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 1705.

Average Hours per Response: HMS permit applications, 30 minutes; HMS permit renewal applications, 3 minutes; CPS renewal applications, 15 minutes; CPS transfers, 30 minutes; photo requirement, 30 minutes; exempted fishing permits, 1 hour; appeals, 2 hours.

Burden Hours: 94.

Needs and Uses: This request is for a revision and extension to the existing reporting requirements approved under OMB Control Number 0648–0204, West Coast Region Family of Forms. The West Coast Region (WCR) Permits Office administers permits required for persons to participate in Federally-managed fisheries off the West Coast under the Magnuson-Stevens Fishery Conservation and Management act, 16 U.S.C. 1801 *et seq.* There are three types of permits: basic fishery permits for Highly Migratory Species (HMS), limited entry permits for Coastal Pelagic Species (CPS), and experimental fishing permits (EFP). The WCR Permits Office proposes to revise one permit within the collection of information approved under OMB Control Number 0648–0204.

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[20] In the *Italy Final,* the Department found that critical circumstances existed for Marcegaglia S.p.A. Because we calculated a *de minimis* preliminary dumping margin for Marcegaglia S.p.A., we did not instruct CBP to collect cash deposits until 90 days before the *Italy Final.*

[21] *See* India Ministerial Error Memo for a complete discussion regarding the change to JSW's weighted-average dumping margin and cash deposit rate.

[22] The Department found JSW Steel Ltd. and JSW Coated Products Limited to be affiliated and treated them as a single entity. JSW's cash deposit rate was reduced as a result of correction of the ministerial errors described above. *See India Final,* 81 FR at 35330.

[23] The Department found Uttam Galva Steels Limited, Uttam Value Steels Limited, Atlantis International Services Company Ltd., Uttam Galva Steels, Netherlands, B.V., and Uttam Galva Steels (BVI) Limited to be affiliated and treated them as a single entity. *See India Final,* 81 FR at 35330.

[24] The Department found that Marcegaglia S.p.A.'s weighted-average dumping margin and cash deposit rate should also be applied to Marcegaglia Carbon Steel. *See Italy Final* and accompanying Issues and Decision Memorandum at Comment 2.

[25] The Department found Yieh Phui Enterprise Co., Ltd., Synn Industrial Co., Ltd., and Prosperity Tieh Enterprise Co., Ltd., to be affiliated and treated them as a single entity. *See Taiwan Final,* 81 FR at 35314.

Currently, under 50 CFR part 660.707, HMS permits are issued to vessels that fish for HMS off or land HMS in the States of California, Oregon, and Washington. Permits are issued for a 2-year term and remain valid until the first date of renewal. The Inter-American Tropical Tuna Commission (IATTC) adopted amended Resolution C–11–06 which requires a vessel on the IATTC regional vessel registry to add a photograph of the vessel showing its identifying vessel markings. NMFS proposed to revise OMB Control Number 0648–0204 to require new and renewing applicants to submit a vessel photo with their application. Owners can email or mail photographs to the Long Beach Permits Office, which in turn will be submitted to the IATTC vessel database manager. Online submission option is expected to be available through the National Permits System (NPS) by 2016 year-end.

NMFS estimates this revision could affect up to 1639 respondents, which is the total number of permitted HMS vessels. Currently, HMS renewal forms are mailed to permit holders within 60 days prior to expiration. To reduce the expected burden from photo submission, pre-filled renewal forms with basic data will substitute the current renewal application. Forms can be completed by signing and dating a statement of acknowledgement that all current information is correct.

The basic information collected from applicants will remain the same. There will be minimal expected public burden to submit photographs, which will not apply after the initial photo is submitted. There will be no additional burden beyond the estimated application processing time or recordkeeping/reporting costs.

Affected Public: Business or other for-profit organizations; individuals or households.

Frequency: Biannually and on occasion.

Respondent's Obligation: Required to obtain or retain benefits.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: July 20, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–17471 Filed 7–22–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE664

Marine Mammals; File No. 20481

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the BBC Natural History Unit, 23 Whiteladies Road, Bristol BS8 2LR, United Kingdom, has applied in due form for a permit to conduct commercial and educational photography of California sea lions (*Zalophus californianus*).

DATES: Written, telefaxed, or email comments must be received on or before August 24, 2016.

ADDRESSES: These documents are available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 20481 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Rosa González or Jennifer Skidmore, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant proposes to film California sea lions (*Zalophus californianus*) for a documentary film on animal behavior [*i.e.,* OCEAN (BLUE PLANET II)]. Filming activities would occur along the California coast and offshore from Point Año Nuevo south to the Channel Islands, focusing on the Monterey Bay region. Up to 1,000 California sea lions would be approached for filming from land, vessel, and underwater (snorkelers or scuba divers). In addition, up to 1,000 long-beaked common dolphins (*Delphinus capensis*) and 1,000 short-beaked common dolphins (*D. delphis*) may be incidentally harassed and filmed during operations. Filming would occur August 2016 through March 2017, although the key filming period is expected to be mid-August to early/mid-September. The permit is requested for a one year period.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 19, 2016.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–17402 Filed 7–22–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE747

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Caribbean Fishery Management Council's Scientific and Statistical Committee (SSC) will hold a three-day meeting.

DATES: The meetings will be held on August 17–19, 2016.

ADDRESSES: The meetings will be held at the Council Office: 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903, telephone (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Caribbean Fishery Management Council's Scientific and Statistical Committee (SSC) will hold a three-day meeting to discuss the items contained in the following agenda:

- Call to Order
- Adoption of Agenda
- Island Based Fishery Management Plans (IBFMPs)
  - Review Goals and Objectives of the IBFMPs
  - Finalize Action 1: Species to include for federal management in each IBFMP
  - Recommendations to the Caribbean Fishery Management Council (CFMC)
  - Review/Finalize Action 2: Review Consolidated List of Stocks and Stock Complexes/Species Complexes—NMFS Southeast Regional Office (SERO) Update
  - Recommendations to CFMC
  - Review Action 3: Reference Points
  - Update SEDAR 46 US Caribbean Data Limited Species—Southeast Fisheries Science Center (SEFSC)
  - Acceptable Biological Catch (ABC) Control Rule Work Group Report
  - Brief review of ABC Control Rule
  - Examples of ABC Control Rules: South Atlantic, Gulf of Mexico, Western Pacific Councils
  - Discussion on tiers ABC Control Rule
  - Evaluation of components of uncertainty
  - Potential guidance coming out of data poor models (Overfishing Limit (OFL) and ABC advice)
  - Review U.S. Caribbean landings data (commercial and recreational) for entire historical series
  - Recommendations to the SSC from the ABC Working Group
  - Recommendations to the CFMC on ABC Control Rule
  - Consider Action 4: Framework Procedures for the IBFMP
- Finalize 5-year CFMC—Other Business

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: July 19, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–17450 Filed 7–22–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE704

International Whaling Commission; 66th Meeting; Announcement of Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: This notice announces the date, time, and location of the public meeting to be held prior to the 66th International Whaling Commission (IWC) meeting.

DATES: The public meeting will be held October 3, 2016, at 9:30 a.m.

ADDRESSES: The public meeting will be held in the NOAA Science Center Room, 1301 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Jordan Carduner at *jordan.carduner@noaa.gov* or 301–427–8483.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce is responsible for discharging the domestic obligations of the United States under the International Convention for the Regulation of Whaling, 1946. The U.S. IWC Commissioner has responsibility for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. The U.S. IWC Commissioner is staffed by the Department of Commerce and assisted by the Department of State, the Department of the Interior, the Marine Mammal Commission, and other U.S. Government agencies.

A draft agenda for the upcoming IWC meeting will be posted on the IWC Secretariat's Web site at *http://www.iwc.int.*

NOAA will a hold public meeting to discuss the tentative U.S. positions for the October 2016 IWC meeting in Slovenia. Because the NOAA public meeting will address U.S. positions, the substance of the meeting must be kept confidential. Any U.S. citizen with an identifiable interest in U.S. whale conservation policy may participate, but NOAA reserves the authority to inquire about the interests of any person who appears at the meeting and to determine the appropriateness of that person's participation. In particular, persons who represent foreign interests may not attend. Persons deemed by NOAA to be ineligible to attend will be asked to leave the meeting. These stringent measures are necessary to protect the confidentiality of U.S. negotiating positions.

The October 3, 2016, meeting will be held in the NOAA Science Center Room, 1301 East-West Highway, Silver Spring, MD 20910. Photo identification is required to enter the building.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jordan Carduner, *jordan.carduner@noaa.gov* or 301–427–8483, by September 19, 2016.

Dated: July 19, 2016.

John Henderschedt,

Director, Office of International Affairs and Seafood Inspection Program, National Marine Fisheries Service.

[FR Doc. 2016–17452 Filed 7–22–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE748

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Caribbean Fishery Management Council's ABC Control Rule Group will hold a two-day meeting.

DATES: The meetings will be held on August 15 and 16, 2016.

ADDRESSES: The meetings will be held at the Caribbean Fishery Management Council Headquarters, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION:

The Caribbean Fishery Management Council's ABC Control Rule Group will hold a two-day meeting to discuss the items contained in the following agenda:

- Call to Order
- Adoption of Agenda
- Brief Review of ABC Control Rule
- Examples of ABC Control Rules: South Atlantic, Gulf of Mexico, Western Pacific
- Discussion on tiers ABC Control Rule
- Evaluation of components of uncertainty
- Potential guidance coming out of data poor models (OFL advice to ABC SSC advice to CFMC)
- Review landings data (commercial and recreational) for entire historical series
- Recommendations to the SSC
- Other Business

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: July 19, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–17451 Filed 7–22–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 16–47]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

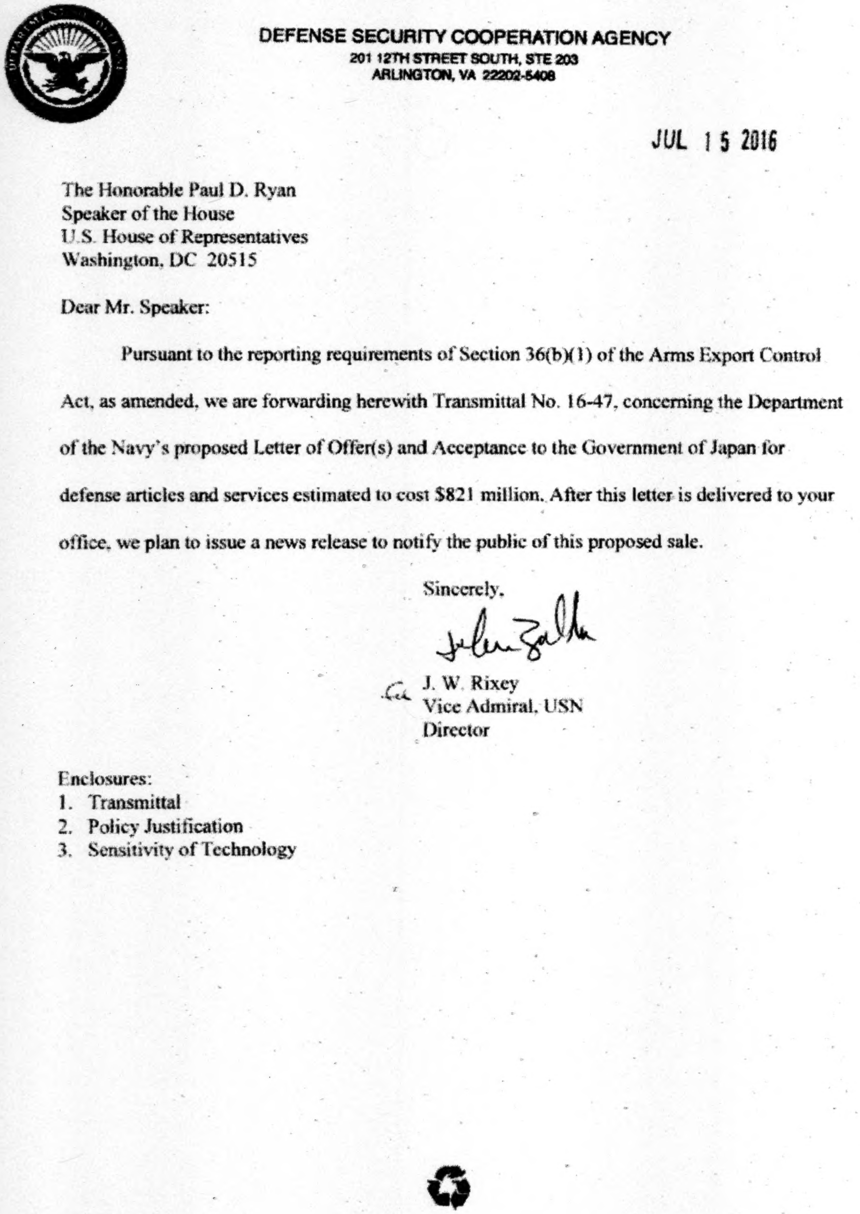
FOR FURTHER INFORMATION CONTACT: Chandelle K. Parker, DSCA/LMO, (703) 697–9027.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 16–47 with attached Policy Justification and Sensitivity of Technology.

Dated: July 20, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.



DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUL 15 2016

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 16-47, concerning the Department of the Navy's proposed Letter of Offer(s) and Acceptance to the Government of Japan for defense articles and services estimated to cost $821 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 16–47

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Japan

(ii) *Total Estimated Value:*

Major Defense Equipment*	$685 million
Other	$136 million
TOTAL	$821 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE): Up to two hundred forty-six (246) Standard Missiles (SM–2), Block IIIB Vertical Launching Tactical All-Up Rounds, RIM–66M–09

Non-MDE: This request also includes the following Non-MDE: MK 13 MOD 0 Vertical Launching System Canisters, operator manuals, U.S. Government and contractor engineering, technical and logistics support services.

(iv) *Military Department:* Navy (ATA and ASZ)

(v) *Prior Related Cases, if any:* JA–P–ARH—MAR 11, $32,149,836; JA–P–AQO—FEB 08, $36,133,478; JA–P–AQE—AUG 06, $25,932,921; JA–P–AQF—AUG 06, $32,030,680; JA–P–ANW—SEP 05, $46,147,937; JA–P–ANX—SEP 05, $30,207,196; JA–P–APS—SEP 05, $24,923,134; JA–P–APT—NOV 04, $25,041,269; JA–P–APU—NOV 04, $18,297,591; JA–P–APV—NOV 04, $13,328,470; JA–P–

APG—JUL 03, $26,545,311; JA–P–APP—JUL 03, $15,581,478

(vi) *Sales Commission, Fee, etc. Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex attached

(viii) *Date Report Delivered to Congress:* 15 July 2016

* as defined in Section 47(6) of the Arms Export Control Act

POLICY JUSTIFICATION

Japan—SM–2 Block IIIB Standard Missiles

The Government of Japan has requested a possible sale of up to two hundred forty-six (246) Standard Missile (SM–2), Block IIIB Vertical Launching Tactical All-Up Rounds, RIM–66M–09. This request also includes MK 13 MOD 0 Vertical Launching System Canisters, operator manuals and technical documentation, U.S. Government and contractor engineering, technical and logistics support services. The total estimated value of Major Defense Equipment (MDE) is $685 million. The total overall estimated value is $821 million.

Japan is one of the major political and economic powers in East Asia and the Western Pacific, a key democratic partner of the United States in ensuring regional peace and stability, a close coalition ally in regional contingency operations, and a close cooperative and international exchange agreement partner. It is vital to U.S. national interests that Japan develops and maintains a strong and ready self-defense capability. This transaction is consistent with U.S. foreign policy and national security objectives and the 1960 Treaty of Mutual Cooperation and Security.

These SM–2 Block IIIB missiles will be used for anti-air warfare at sea. Japan currently fields four Kongo-class and two Atago-class destroyers, all of which are equipped with the Aegis Combat system and SM–2 Block IIIA/IIIB missiles. Japan is also building two new Aegis-equipped destroyers based on a modified Atago-class hull. The SM–2 Block IIIB missiles proposed in this sale will be used on these two future destroyers as well as supplementing Japan's missile inventory. Combined with the Aegis combat system, the SM–2 Block IIIB provides significantly enhanced area defense capabilities over critical East Asian and Western Pacific air and sea-lines of communication. Japan has two Intermediate-Level Maintenance Facilities capable of maintaining the SM–2 Block IIIB and will have no difficulty absorbing these new missiles into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be Raytheon Missile Systems Company, Tucson, Arizona; Raytheon Company, Camden, Arkansas; and BAE of Minneapolis and Aberdeen, South Dakota. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this sale will not require the assignment of any U.S. or contractor representatives to Japan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 16–47

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item No. vii

(vii) *Sensitivity of Technology:*

1. A completely assembled Standard Missile–2 (SM–2) Block IIIB with or without a conventional warhead, whether a tactical, telemetry or inert (training) configuration, is classified CONFIDENTIAL. Missile component hardware includes: Guidance Section (classified CONFIDENTIAL), Target Detection Device (classified CONFIDENTIAL), Warhead (UNCLASSIFIED), Rocket Motor (UNCLASSIFIED), Steering Control Section (UNCLASSIFIED), Safe and Arming Device (UNCLASSIFIED), Autopilot Battery Unit (classified CONFIDENTIAL), and if telemetry missiles, AN/DKT–71 Telemeters (UNCLASSIFIED).

2. SM–2 operator and maintenance documentation is usually CONFIDENTIAL. Shipboard operation/firing guidance is generally CONFIDENTIAL. Pre-firing missile assembly/pedigree information is UNCLASSIFIED.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Japan can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Japan.

[FR Doc. 2016–17476 Filed 7–22–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0078]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 23, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated forms for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Joint Personnel Adjudication System, ATTN: Defense Manpower Data Center (DMDC) Boyers, ATTN: JPAS PM, P.O. Box 168, Boyers, PA 16020–0168.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Joint Personnel Adjudication System (JPAS); OMB Control Number 0704–0496.

Needs and Uses: JPAS requires personal data collection to facilitate the initiation, investigation and adjudication of information relevant to DoD security clearances and employment suitability determinations for active duty military, civilian employees and contractors requiring such credentials. As a Personnel Security System it is the authoritative source for clearance information resulting in accesses determinations to sensitive/classified information and facilities. Specific uses include: Facilitation for DoD Adjudicators and Security Managers to obtain accurate up-to-date eligibility and access information on all personnel (military, civilian and contractor personnel) adjudicated by the DoD. The DoD Adjudicators and Security Managers are also able to update eligibility and access levels of military, civilian and contractor personnel nominated for access to sensitive DoD information.

Affected Public: Individuals or Households.

Annual Burden Hours: 333,333.

Number of Respondents: 500,000.

Responses per Respondent: 2.

Annual Responses: 1,000,000.

Average Burden per Response: 20 minutes.

Frequency: On occasion.

The Joint Personnel Adjudication System (JPAS) is a DoD personnel security system and is the authoritative source for clearance information resulting in access determinations to sensitive/classified information and facilities. Collection and maintenance of personal data in JPAS is required to facilitate the initiation, investigation and adjudication of information relevant to DoD security clearances and employment suitability determinations for active duty military, civilian employees, and contractors requiring such credentials. Facility Security Officers (FSOs) working in private companies that contract with DoD and who need access to the JPAS system to update security-related information about their company's employees must complete DD Form 2962. Once granted access, the FSOs maintain employee personal information, submit requests for investigations, and submit other relevant personnel security information into JPAS on over 1,000,000 contract employees annually.

Dated: July 20, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–17493 Filed 7–22–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 16–40]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Chandelle K. Parker, DSCA/LMO, (703) 697–9027.

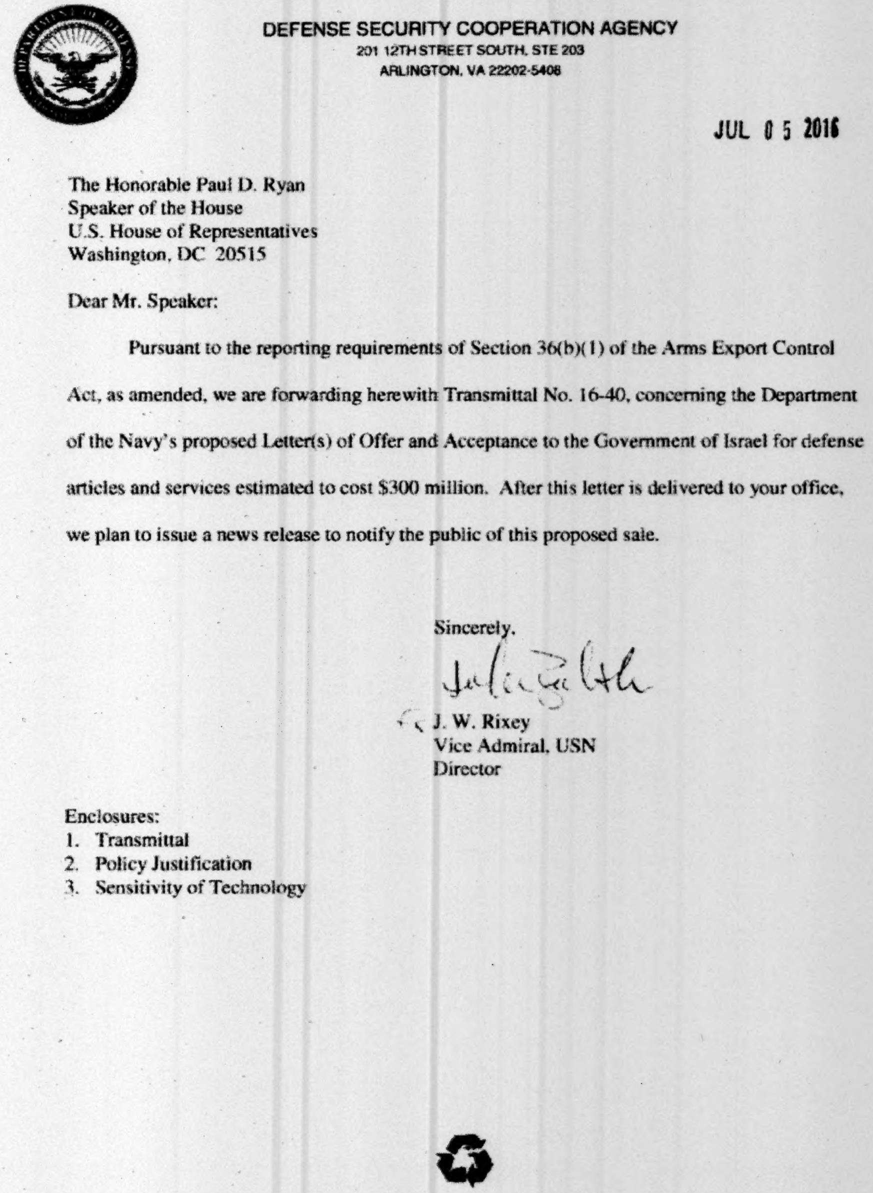
The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 16–40 with attached Policy Justification and Sensitivity of Technology.

Dated: July 20, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P



DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUL 05 2016

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 16-40, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Israel for defense articles and services estimated to cost $300 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 16–40

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Israel

(ii) *Total Estimated Value:*

Major Defense Equipment *	$55 million
Other	$245 million
TOTAL	$300 million

(iii) *Description and Quantity or Quantities of Articles or Services Under Consideration for Purchase:*

Major Defense Equipment (MDE):
Twelve (12) T–700 GE 401C engines (ten (10) installed and two (2) spares)

Non-MDE:
This request also includes the following non-MDE items: eight (8) AN/APN–194(V) Radar Altimeters, eight (8) AN/APN–217A Doppler Radar Navigation Sets, eight (8) AN/ARN–151 (V)2 Global Positioning Systems, eight (8) AN/APX–100(V) Identification Friend or Foe (IFF) Transponder Sets, eight (8) OA–8697 A/ARD Direction Finding Groups, eight (8) AN/ARN–118(V) NAV Receivers, eight (8) AN/ARN–146 On Top Position Indicators, sixteen (16) IP–1544A/ASQ–200 Horizontal Situation Video Displays (HSVD), eight (8) AN/ARC–174A (V)2 HF Radios, sixteen (16) AN/ARC182(V) UHF/UHF Radios, eight (8) PIN 70600–81010–011 Communication System Controllers, eight (8) GAU–16 50 Caliber Machine Guns, eight (8) M–60D/M–240 Machine Guns, eight (8) Internal Auxiliary Fuel Tanks, sixteen (16) External Auxiliary Fuel Tanks, and

eight (8) C–11822/AWQ Controllers, Armament System. Also included are spares and repair parts, support and test equipment, communication equipment, ferry support, publications and technical documentation, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistical and program support.

(iv) *Military Department:* Navy

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed To Be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed To Be Sold:* See Annex attached.

(viii) *Date Report Delivered to Congress:* 5 July 2016

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Israel—Excess SH–60F Sea-Hawk Helicopter equipment and support:

The Government of Israel has requested to procure twelve (12) T–700 GE 401C engines (ten (10) installed and two (2) spares), eight (8) AN/APN–194(V) Radar Altimeters; eight (8) AN/APN–217A Doppler Radar Navigation Sets; eight (8) AN/ARN–151 (V)2 Global Positioning Systems; eight (8) AN/APX–100(V) Identification Friend or Foe (IFF) Transponder Sets; eight (8) OA–8697 A/ARD Direction Finding Groups; eight (8) AN/ARN–118(V) NAV Receivers; eight (8) AN/ARN–146 On Top Position Indicators; sixteen (16) IP–1544A/ASQ–200 Horizontal Situation Video Displays (HSVD); eight (8) AN/ARC–174A (V)2 HF Radios; sixteen (16) AN/ARC182(V) UHF/UHF Radios; eight (8) PIN 70600–81010–011 Communication System Controllers; eight (8) GAU–16 50 Caliber Machine Guns; eight (8) M–60D/M–240 Machine Guns; eight (8) Internal Auxiliary Fuel Tanks; sixteen (16) External Auxiliary Fuel Tanks; and eight (8) C–11822/AWQ Controllers, Armament System. Also included are spares and repair parts, support and test equipment, communication equipment, ferry support, publications and technical documentation, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistical and program support. The estimated cost is $300 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a strategic regional partner, which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

Israel has been approved to receive eight (8) SH–60F Sea Hawk Helicopters via the Excess Defense Articles (EDA) Program under a separate notification. That separate notification included only the SH–60 airframes, thus this transmittal includes all the major components and customer-unique requirements requested to supplement the EDA grant transfer.

Israel has purchased four new frigates to secure the Leviathan Natural Gas Field. The SH–60F helicopters will be used onboard these new frigates to patrol and protect these gas fields as well as other areas under threat.

The proposed sale will improve Israel's capability to meet current and future threats. The SH–60F Sea-Hawk Helicopters along with the parts, systems, and support enumerated in this notification will provide the capability to perform troop/transport deployment, communications relay, gunfire support, and search and rescue. Secondary missions include vertical replenishment, combat search and rescue, and humanitarian missions. Israel will use the enhanced capability as a deterrent to regional threats and to strengthen its homeland defense. Israel will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be Science and Engineering Services, LLC, Huntsville, Alabama, and General Electric (GE) of Lynn, Massachusetts. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of additional U.S. Government and/or contractor representatives to Israel.

Transmittal No. 16–40

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The U.S. Navy primarily employed the SH–60F as an aircraft carrier based anti-submarine warfare aircraft and a search and rescue support aircraft during carrier flight operations. Unless otherwise noted below, SH–60F hardware and support equipment, test equipment and maintenance spares are UNCLASSIFIED.

2. Global Positioning System (GPS)/Precise Positioning Service (PPS)/Selective Availability Anti-spoofing Module (SAASM). The GPS/PPS/SAASM provides a Space-based Global Navigation Satellite System (GNSS) that provides reliable location and time information in all weather at all times and anywhere on or near the Earth when the signal is unobstructed line of site to four or more GPS satellites.

3. The AN/ARC–182–electronic counter-countermeasures (ECCM) Radio is a combined Very High Frequency (VHF)/Ultra High Frequency (UHF) military communications system designed for all types of fixed-wing aircraft and helicopters. Small and light enough to be especially attractive for installation in the lighter aircraft classes, it covers the frequency bands from 30 to 88 MHz in FM, 116 to 156 MHz in AM, 156 to 174 MHz in FM and for the UHF band 225 to 400 MHz in both AM and FM modes. Additionally, a receiver-only facility covering the band 108 to 116 MHz is provided for navigation purposes. Channel spacing throughout the range is at 25 KHz intervals.

4. The AN/ARC–174A (V)2 HF Radio provides capability to transmit and receive on Upper Sideband (USB), Lower Sideband (LSB), and Amplitude Modulation (AM).

5. A determination has been made that Government of Israel can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

6. All defense articles and services listed in this transmittal have been authorized for release and export to Israel.

[FR Doc. 2016–17466 Filed 7–22–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 16–27]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

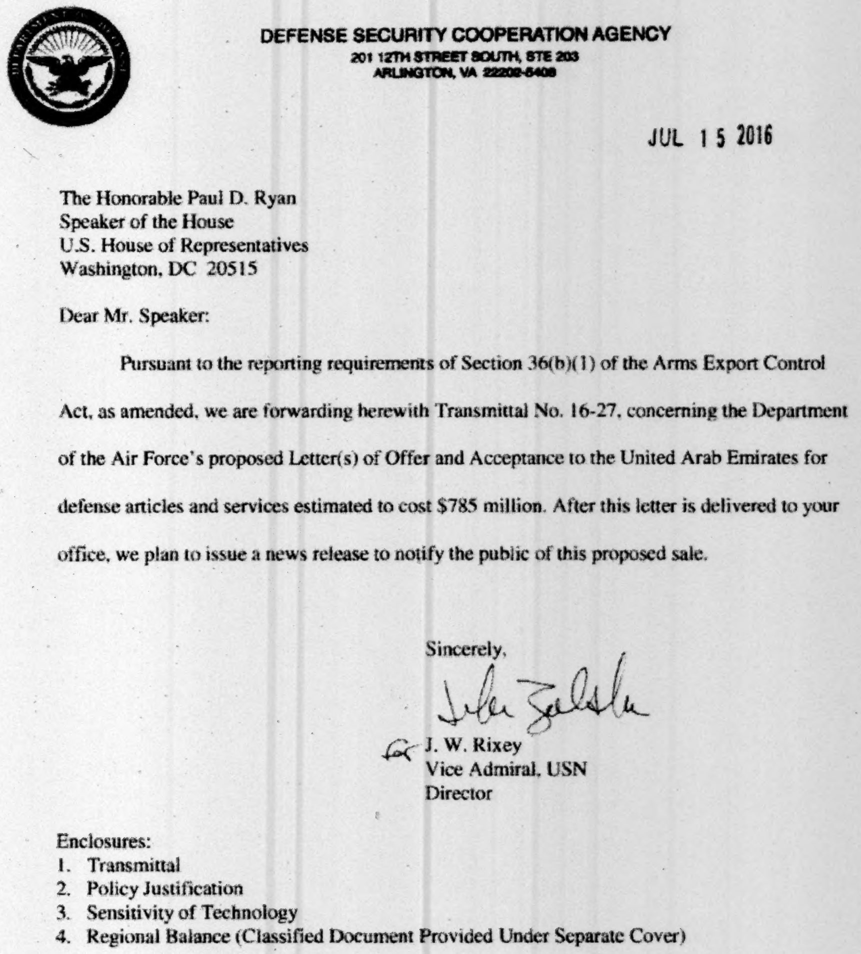
FOR FURTHER INFORMATION CONTACT: Chandelle K. Parker, DSCA/LMO, (703) 697–9027.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 16–27 with attached Policy Justification and Sensitivity of Technology.

Dated: July 20, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.



DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUL 15 2016

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 16-27, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the United Arab Emirates for defense articles and services estimated to cost $785 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

for J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 16–27

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* United Arab Emirates

(ii) *Total Estimated Value:*

Major Defense Equipment *	$740 million
Other	$45 million
TOTAL	$785 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Seven thousand seven hundred (7,700) GBU–10 guidance kits

Seven thousand seven hundred (7,700) Mk–84/BLU–117 bombs

Five thousand nine hundred forty (5,940) GBU–12 guidance kits

Five thousand nine hundred forty (5,940) Mk–82/BLU–111 bombs

Five hundred (500) GBU–31V1 guidance kits

Five hundred (500) Mk–84/BLU–117 bombs

Five hundred (500) GBU–31V3 guidance kits

Five hundred (500) BLU–109 bombs

Fourteen thousand six hundred forty (14,640) FMU–152 fuzes

Non-MDE:

Also included is munitions support. The estimated value of this possible sale is $785 million.

(iv) *Military Department:* USAF (AAD, A02)

(v) *Prior Related Cases, if any:* SAA–$113,853,132–AUG 00, YAB–$156,304,329–AUG 02, YAC–$874,241,603–MAR 08, AAC–$13,467,991–JUN 11, AAD–$11,827,867–JAN 15, AAE–$130,000,000–OCT 15, AAF–$310,000,000–JAN 16

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex.

(viii) *Date Report Delivered to Congress:* 15 July 2016

* as defined in Section 47(6) of the Arms Export Control Act.

Policy Justification

United Arab Emirates—Munitions, Sustainment, and Support

The Government of the United Arab Emirates (UAE) requests approval to procure seven thousand seven hundred (7,700) GBU–10 guidance kits with seven thousand seven hundred (7,700) Mk–84/BLU–117 bombs, five thousand nine hundred forty (5,940) GBU–12 guidance kits with five thousand nine hundred forty (5,940) Mk–82/BLU–111 bombs, five hundred (500) GBU–31V1 guidance kits with five hundred (500) Mk–84/BLU–117 bombs, five hundred (500) GBU–31V3 guidance kits with five hundred (500) BLU–109 bombs, and fourteen thousand six hundred forty (14,640) FMU–152 fuzes. This sale also includes non-MDE munitions items. The total estimated value of MDE is $740 million. The overall total estimated value is $785 million.

This proposed sale contributes to the foreign policy and national security of the United States by helping the UAE remain an active member of the OPERATION INHERENT RESOLVE (OIR) coalition working to defeat the Islamic State in Iraq and the Levant (ISIL). These munitions will sustain the UAE's efforts and support a key partner that remains an important force for political stability and economic progress in the Middle East.

The proposed sale provides the UAE additional precision guided munitions to meet current and future threats. The UAE continues to provide host-nation support of vital U.S. forces stationed at Al Dhafra Air Base and plays a vital role in supporting U.S. regional interests. The UAE was a valued partner and active participant in OPERATION IRAQI FREEDOM (OIF), OPERATION ENDURING FREEDOM (OEF), OPERATION UNIFIED PROTECTOR (OUP), and now is a valued partner in OIR coalition operations.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The UAE will have no difficulties absorbing these munitions into its inventory.

The munitions will be sourced through procurement and the contractor determined during contract negotiations. There are no known offset agreements proposed in connection with this potential sale.

There are no additional U.S. Government or contractor representatives anticipated to be stationed in the UAE as a result of this potential sale.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 16–27

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The GBU–31 2,000-pound Joint Direct Attack Munition (JDAM) is a guidance tail kit that converts unguided free-fall bombs into accurate, Global Positioning System (GPS) guided adverse weather "smart" munitions. With the addition of a new tail section that contains an inertial navigational system (INS) and a GPS guidance control unit, JDAM improves the accuracy of unguided, general-purpose bombs in an all-weather condition. JDAM can be launched from very low to high altitudes in a dive, toss and loft, or in straight and level flight with an on-axis or off-axis delivery. JDAM enables multiple weapons to be directed against single or multiple targets on a single pass.

a. The GBU–31V1 contains the standard 2,000-pound BLU–117 or Mk–84 bomb body. The GBU–31V3 contains the 2,000-pound BLU–109 penetrator bomb body. The highest classification for the JDAM, its components, and technical data is SECRET.

b. Weapon accuracy depends on target coordinates and present position as entered into the guidance control unit. After weapon release, movable tail fins guide the weapon to the target coordinates. In addition to the tail kit, other elements in the overall system that are essential for successful employment include: Access to accurate target coordinates, INS/GPS capability, and Operational Test and Evaluation Plan.

2. The GBU–12 is a 500-pound laser-guided ballistic bomb (LGB). The LGB is a maneuverable, free-fall weapon that guides to a spot of laser energy reflected off of the target. The LGB is delivered like a normal general-purpose (GP) warhead and the semi-active guidance corrects for many of the normal errors inherent in any delivery system. Laser designation for the weapon can be provided by a variety of laser target markers or designators.

a. The LGB consists of a laser guidance kit, a computer control group (CCG), and a warhead specific Air Foil Group (AFG), that attach to the nose and tail of Mk–82 or BLU–111 bomb bodies. The overall weapon is CONFIDENTIAL.

3. The GBU–10 is a 2,000-pound laser-guided ballistic bomb (LGB). The LGB is a maneuverable, free-fall weapon that guides to a spot of laser energy reflected off of the target.

The LGB is delivered like a normal GP warhead and the semi-active guidance corrects for many of the normal errors inherent in any delivery system. Laser designation for the weapon can be provided by a variety of laser target markers or designators.

a. The LGB consists of a laser guidance kit, a CCG, and a warhead AFG that attach to the nose and tail of Mk–84 or BLU–117 bomb body. The overall weapon is CONFIDENTIAL.

4. The FMU–152 is a multi-delay, multi-arm fuze and proximity sensor compatible with GP blast, fragmentation, and hardened-target penetrator warheads. The fuze is cockpit selectable in-flight (prior to release) when used with JDAM weapons. The FMU–152 interfaces with the GBU–10, GBU–12, and GBU–31 weapons among others. The hardware is UNCLASSIFIED.

5. A determination has been made that the UAE can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government.

6. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this sale outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

7. All defense articles and services listed in this transmittal have been authorized for release and export to the UAE.

[FR Doc. 2016–17483 Filed 7–22–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Availability (NOA) for a Finding of No Significant Impact (FONSI) for the Environmental Assessment (EA) Addressing the Closure of Former Defense Fuel Support Point (DFSP) Moffett Field Located in Santa Clara County, California

AGENCY: Defense Logistics Agency (DLA), DoD.

ACTION: Notice of Availability (NOA) for a Finding of No Significant Impact (FONSI) for the Environmental Assessment (EA) addressing the Closure of Former Defense Fuel Support Point (DFSP) Moffett Field located in Santa Clara County, CA.

SUMMARY: On May 16, 2016, DLA published a NOA in the **Federal Register** announcing the publication of the EA addressing the Closure of DFSP Moffett Field in Santa Clara County, CA (81 FR 30266). The EA was available for a 30-day public comment period that ended June 15, 2016. The EA was prepared as required under the National Environmental Policy Act (NEPA) of 1969 and complies with DLA Regulation 1000.22. No comments were received during the public comment period. This FONSI documents the decision of DLA to proceed with the Closure of DFSP Moffett Field. DLA has determined that the Proposed Action is not a major Federal action significantly affecting the quality of the human environment within the context of NEPA and that no significant impacts on the human environment are associated with this decision.

FOR FURTHER INFORMATION CONTACT: Stacey Christenbury at 703–767–6557 during normal business hours Monday through Friday, from 8:00 a.m. to 4:30 p.m. (EST) or by email: *NEPA@dla.mil.*

SUPPLEMENTARY INFORMATION:

Cooperating Agency: National Aeronautics and Space Administration.

DLA completed an EA to address the potential environmental consequences associated with the proposed closure of DFSP Moffett Field in Santa Clara County, CA. This FONSI incorporates the EA by reference and summarizes the results of the analyses in the EA. The final EA is available in hardcopy at the Mountain View Public Library, located at 585 Franklin Street, Mountain View, California 94041, Phone: (650) 903–6337 or electronically at *http://www.dla.mil/Portals/104/Documents/Energy/Publications/E_Moffett_FinalEA_160713.pdf?ver=2016-07-13-120724-920.*

Purpose and Need for Action: The purpose of the Proposed Action is to reduce environmental risks associated with the five closed USTs; address two Notices of Violation that DLA Energy, received in March 2015 from the State of California Water Resources Control Board and County of Santa Clara regarding improper UST maintenance; and eliminate aging infrastructure no longer required to meet the Department of Defense mission. DLA Energy received the Notices of Violation based upon the State of California Water Resources Control Board and County of Santa Clara's determination that DLA is not maintaining the five USTs in compliance with California and Santa Clara County codes after the USTs were emptied and cleaned in 2005. The Proposed Action is therefore also necessary to resolve State of California Water Resources Control Board and County of Santa Clara assertions that DLA is not in compliance with the California Code of Regulations (CCR), Title 23, Division 3, Chapter 16, Article 7, Underground Storage Tank Requirements, and Unified Facilities Criterion 3–460–0. DLA Energy is committed to closure of these tanks, as well as implementation of a phased closure agreement (Phase II) with the Santa Clara Environmental Health Department.

Proposed Action and Alternatives: Under the Proposed Action, DLA proposes to permanently close DFSP Moffett Field. Under this proposal the fuel facility infrastructure would be physically disconnected, abandoned in place, dismantled, and/or demolished. NASA would continue to be the property owner of the parcel. The Proposed Action involves the closure of the five USTs and associated pipelines, truck fill stands, high-speed aircraft fueling hydrants, and related infrastructure (*e.g.,* manhole vaults, pumps, pump houses, pump pads, hydrants, racks, cathodic protection system).

Description of the No Action Alternative: Under the No Action Alternative, DFSP Moffett Field's former fuel facilities would remain in their current nonclosure status and the State of California Water Resources Control Board and County of Santa Clara, would continue to consider the site in violation of state and county environmental regulations for the failure to be properly closed. Implementation of the No Action Alternative would leave the DFSP Moffett Field facilities in a caretaker status. The No Action Alternative would not meet the purpose of and need for the Proposed Action.

Potential Environmental Impacts: No significant effects on environmental resources would be expected from the Proposed Action. Potential insignificant, adverse effects on air quality, biological resources, geology, water resources, hazardous materials and waste, noise, and transportation could be expected. No effects on cultural resources, environmental justice, land use, public health and safety, socioeconomics, recreation, utilities, or visual resources would be expected. Details of the environmental consequences are discussed in the EA, which is hereby incorporated by reference.

Determination: Based on the analysis of the Proposed Action's potential impacts to the human environment from routine operations, it was concluded that the Proposed Action would produce no significant adverse impacts. Human environment was interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. No significant cumulative effects were identified. Implementation of the Proposed Action will not violate any Federal, state, or local laws. Based on the results of the analyses performed during preparation of the EA, Ms. Mary D. Miller, Director, DLA Installation Support, concludes that the Closure of DFSP Moffett Field in Santa Clara County, CA does not constitute a major Federal action significantly affecting the quality of the human environment within the context of NEPA. Therefore, an environmental impact statement for the Proposed Action is not required.

Dated: July 20, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–17504 Filed 7–22–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2013–OS–0068]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant to the Secretary of Defense for Public Affairs, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Assistant to the Secretary of Defense for Public Affairs announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 23, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to: The Office of the Assistant to the Secretary of Defense for Public Affairs, ATTN: CPO (Adrien F. Creecy-Starks), 1400 Defense, The Pentagon, Washington, DC 20301–1400, or call the Directorate for Community and Public Outreach at (703) 695–3845.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Request for Armed Forces Participation in Public Events (Non-Aviation), DD Form 2536 and Request for Military Aerial Support, DD Form 2535; OMB Control Number 0704–0290.

Needs and Uses: This information collection requirement is necessary to evaluate the eligibility of events to receive Armed Forces community relations support and to determine whether requested military assets are available.

Affected Public: State, local, or tribal governments; Federal agencies or employees; for-profit and non-profit institutions; and individuals or households.

Annual Burden Hours: 17,850.

Number of Respondents: 51,000.

Responses per Respondent: 1.

Average Burden per Response: 21 minutes.

Frequency: On Occasion.

Respondents are individuals or representatives of Federal and non-Federal government agencies, community groups, for-profit and non-profit organizations, and civic organizations requesting Armed Forces support for patriotic events conducted in the civilian domain. DD Forms 2535 and 2536 record the type of military support requested, event data, and sponsoring organization information. The completed forms provide the Armed Forces the minimum information necessary to determine whether an event is eligible for military participation and whether the desired support is permissible and/or available. If the forms are not provided, the review process is greatly increased because the Armed Forces must make additional written and telephonic inquiries with the event sponsor. In addition, use of the forms reduces the event sponsor's preparation time because the forms provide a detailed outline of information required, eliminate the need for a detailed letter, and contain concise information necessary for determining appropriateness of military support. Use of the forms is essential to reduce preparation and processing time, increase productivity, and maximize responsiveness to the public.

Dated: July 20, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–17457 Filed 7–22–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 16–39]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

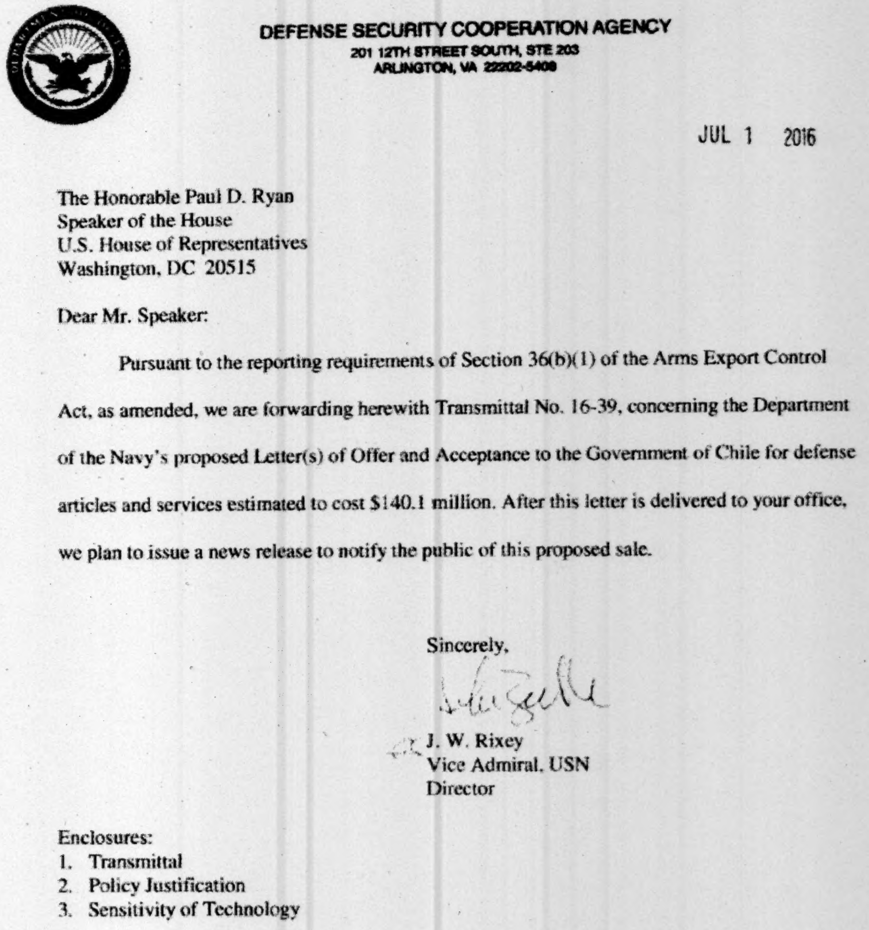
FOR FURTHER INFORMATION CONTACT: Chandelle K. Parker, DSCA/LMO, (703) 697–9027.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 16–39 with attached Policy Justification and Sensitivity of Technology.

Dated: July 20, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.



DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUL 1 2016

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 16-39, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Chile for defense articles and services estimated to cost $140.1 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 16–39

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Chile

(ii) *Total Estimated Value:*

Major Defense Equipment *	$73.2 million
Other	$66.9 million
TOTAL	$140.1 million

*as defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services Under Consideration for Purchase:*

Major Defense Equipment (MDE):

Thirty-three (33) Evolved Seasparrow Missiles (ESSMs)

Six (6) Evolved Seasparrow Telemetry Missiles

Three (3) MK 41 Vertical Launching Systems (VLS), tactical version, baseline VII

Non-MDE:

This request also includes the following Non-MDE: Five (5) ESSM Shipping Containers, Five (5) MK–73 Continuous Wave Illumination Transmitters, Ten (10) MK25 Quad Pack Containers, One (1) Inertial Missile Initializer Power Supply (IMIPS), canisters, spare and repair parts, support and test equipment, publications and technical documentation, personnel training, U.S. Government and contractor engineering, technical and logistics support services, technical assistance, installation and integration oversight support, logistics, program management, packaging and transportation.

(iv) *Military Department:* Navy

(v) *Prior Related Cases, if any:* CI–P–AFO, P&A data

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed To Be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed To Be Sold:* See Annex attached.

(viii) *Date Report Delivered to Congress:* 1 July 2016

POLICY JUSTIFCATION

Chile—Evolved Seasparrow Missiles (ESSMs):

The Government of Chile has requested a possible sale of:

Major Defense Equipment (MDE):

Thirty-three (33) Evolved Seasparrow Missiles (ESSMs)

Six (6) Evolved Seasparrow Telemetry Missiles

Three (3) MK 41 Vertical Launching Systems (VLS), tactical version, baseline VII

Non-MDE:

This request also includes the following Non-MDE: Ten (10) MK25 Quad Pack Canisters; Five (5) ESSM Shipping Containers; Five (5) MK–73 Continuous Wave Illumination Transmitters, One (1) Inertial Missile Initializer Power Supply (IMIPS); spare and repair parts, support and test equipment, publications and technical documentation, personnel training, U.S. Government and contractor engineering, technical and logistics support services, technical assistance, installation and integration oversight support, logistics, program management, packaging and transportation.

The total estimated value of MDE is $73.2 million. The total overall estimated value is $140.1 million.

This proposed sale will contribute to the foreign policy and national security of the United States by increasing Chile's ability to contribute to regional security and promoting interoperability with the U.S. forces. The sale will provide upgraded air defense capabilities on Chile's type 23 frigates. The proposed sale improves Chile's capability to deter regional threats and strengthen its homeland defense. Chile will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be Raytheon Missile Systems, Tucson, Arizona, BAE Systems, Aberdeen, South Dakota, and Lockheed Martin, Bethesda, MD. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Chile.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 16–39

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The sale of Evolved Seasparrow missiles (ESSM) under this proposed FMS case will result in the transfer of classified missile equipment to Chile. Both classified and unclassified defense equipment and technical data will be transferred. The missile includes the guidance section, warhead section, transition section, propulsion section, control section and Thrust Vector Control (TVC), of which the guidance section and transition section are classified CONFIDENTIAL. Standard missile documentation to be provided under this FMS case will include:

a. Parametric documents classified CONFIDENTIAL.

b. Missile Handling/Maintenance Procedures.

c. General Performance Data classified CONFIDENTIAL.

d. Firing Guidance classified CONFIDENTIAL.

e. Dynamics Information classified CONFIDENTIAL.

2. The MK 41 Vertical Launching Systems (VLS) is a fixed, vertical, multi-missile launching system with the capability to store and launch multiple missile variants depending on the warfighting mission. MK 41 VLS is a modular, below-deck configuration with each module consisting of 8 missile cells with an associated gas management and deluge system. The highest classification of the hardware to be exported is UNCLASSIFIED. The highest classification of the technical documentation to be exported is UNCLASSIFIED. The highest classification of software to be exported is CONFIDENTIAL.

3. The proposed sale of ESSM under this FMS case will result in the transfer of sensitive technological information and or restricted information contained in the missile guidance section. Certain operating frequencies and performance characteristics are classified SECRET because they could be used to develop tactics and/or countermeasures to reduce or defeat missile effectiveness.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, primarily performance characteristics, engagement algorithms, and transmitter specific frequencies, the information could be used to develop countermeasures that might reduce weapon system effectiveness.

5. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

6. All defense articles and services listed in this transmittal have been authorized for release and export to Chile.

[FR Doc. 2016–17472 Filed 7–22–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2012–OS–0014]

Proposed Collection; Comment Request

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Logistics Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 23, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive,

Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Logistics Agency Headquarters, ATTN: Mr. Robert Bednarcik, J33, 8725 John J. Kingman Rd., Ft. Belvoir, VA 22060–6221; or call (703)767–1178.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: End-Use Certificate, DLA Form 1822, OMB No. 0704–0382.

Needs and Uses: All individuals wishing to acquire DOD/Government property identified as U.S. Munitions List Items (MLI) or Commerce Control List Item (CCLI) must complete this form each time they enter into a transaction. It is used to clear recipients to ensure their eligibility to conduct business with the government. That they are not debarred bidders; Specially Designated Nationals (SDN) or Blocked Persons; have not violated U.S. export laws; will not divert the property to denied/sanctioned countries, unauthorized destinations or sell to debarred/Bidder Experience List firms or individuals. The EUC informs the recipients that when this property is to be exported, they must comply with the International Traffic in Arms Regulation (ITAR), 22 CFR 120 *et seq.;* Export Administration Regulations (EAR), 15 CFR 730 *et seq.;* Office of Foreign Asset Controls (OFAC), 31 CFR 500 *et seq.;* and the United States Customs Service rules and regulations.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Annual Burden Hours: 14,000.

Number of Respondents: 42,000.

Responses per Respondent: 1.

Annual Responses: 42,000.

Average Burden per Response: .33 hours (20 minutes).

Frequency: On occasion.

Respondents are individuals/businesses/contractors who receive defense property identified as U.S. Munitions List Items and Commerce Control List Items through: Purchase, exchange/trade sale, authorized transfer or donation. They are checked to determine if they are responsible, not debarred bidders, Specially Designated Nationals or Blocked Persons, or have not violated U.S. export laws.

The form is available on the DOD DEMIL/Trade Security Controls Web page, DLA Disposition Services usable property sales Web page, General Services Administration (GSA) auction Web page, and Defense Contract Management Agency offices, FormFlow and ProForm.

Dated: July 20, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–17456 Filed 7–22–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2013–0032]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by August 24, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form And OMB Number: United States Naval Academy Sponsor Application; OMB Control Number 0703–0054.

Type Of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Number of Respondents: 800.

Responses per Respondent: 1.

Annual Responses: 800.

Average Burden per Response: 1 hour.

Annual Burden Hours: 800.

Needs And Uses: This collection of information is necessary to determine the eligibility and overall compatibility between sponsor applicants and Fourth Class Midshipmen at the United States Naval Academy. An analysis of the information collection is made by the Sponsor Program Director during the process in order to best match sponsors with Midshipmen.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: July 20, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–17487 Filed 7–22–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Extension of Public Comment Period on the Environmental Assessment Addressing the Consolidation and Renovation at Marine Corps Forces Reserve Center Brooklyn, New York

AGENCY: Department of the Navy, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of the Navy (DoN) is extending the public comment period for the Environmental Assessment (EA) assessing the potential environmental impacts from the consolidation of approximately 55 full-time active duty and 549 reserve staff and their equipment from the Armed Forces Reserve Center Farmingdale and Marine Forces Reserve Center Garden City to Marine Corps Reserve Center Brooklyn published on June 29, 2016 (81 FR 42338). The comment period scheduled to end July 15, 2016 is extended to August 15, 2016. This action will allow interested persons additional time to analyze the issues and prepare their comments. The EA can be viewed at: *www.marforres.marines.mil/GeneralSpecialStaff/Facilities.aspx.*

DATES: The EA public review period is extended to August 15, 2016.

FURTHER INFORMATION: Mr. Christopher Hurst, NEPA Project Manager, U.S. Marine Corps Forces Reserve, 2000 Opelousas Avenue, New Orleans, LA 70114, or by email at *Christopher.A.Hurst@usmc.mil.*

Dated: July 19, 2016.

N. A. Hagerty-Ford,

Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2016–17537 Filed 7–22–16; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind Program

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information: Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind Program Notice inviting applications for new awards for fiscal year (FY) 2016.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.160C.

DATES:

Applications Available: July 25, 2016.

Deadline for Transmittal of Applications: August 24, 2016.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: Under the Rehabilitation Act of 1973 (Rehabilitation Act), as amended by the Workforce Innovation and Opportunity Act, the Rehabilitation Services Administration (RSA) makes grants to public and private nonprofit agencies and organizations, including institutions of higher education, to establish interpreter training programs or to provide financial assistance for ongoing interpreter training programs to train a sufficient number of qualified interpreters throughout the country. The grants are designed to train interpreters to effectively interpret and transliterate using spoken, visual, and tactile modes of communication; ensure the maintenance of the interpreting skills of qualified interpreters; and provide opportunities for interpreters to improve their skills in order to meet both the highest standards approved by certifying associations and the communication needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind.

Priority: This priority is from the notice of final priority for this program published elsewhere in this issue of the **Federal Register** (NFP).

Absolute Priority: For FY 2016, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Experiential Learning Model Demonstration Center for Novice Interpreters and Baccalaureate Degree ASL-English Interpretation Programs.

Program Authority: 29 U.S.C. 772(f).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, and 99. (b) The Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 396. (e) The NFP.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $800,000.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Note: Under 34 CFR 75.562(c), an indirect cost reimbursement on a training grant is limited to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. Indirect costs in excess of the limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

Project Period: Up to 60 months.

Continuing the Fourth and Fifth Years of the Project: In deciding whether to continue funding the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program for the fourth and fifth years, the Department will conduct a one-day intensive review meeting during the third quarter of the third year of the project period. Specific details of this review and evaluation criteria will be established in the cooperative agreement.

III. Eligibility Information

1. *Eligible Applicants:* Baccalaureate degree ASL-English interpretation programs that are recognized and accredited by the Commission on Collegiate Interpreter Education (CCIE) are eligible to apply as lead applicants in the consortium. States and public or nonprofit agencies and organizations, including institutions of higher education, such as baccalaureate degree ASL-English interpretation programs that are not CCIE accredited, are not eligible to be lead applicants but are eligible to be members of the consortium.

2. *Cost Sharing or Matching:* The Commissioner may award grants to public or private nonprofit agencies or organizations to pay part of the costs for interpreter training programs (section 302(f)(1)(A) of the Rehabilitation Act of 1973). Therefore, in order to be considered for funding, applicants must identify in the application budget and budget narrative a 10 percent match towards the total cost of the project. In order to calculate match, applicants may use the match-calculator available at: *https://rsa.ed.gov/match-calculator.cfm.*

IV. Application and Submission Information

1. *Address To Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write, fax, or call: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.160C.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content and form of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Because of the limited time available to review applications and make a recommendation for funding, we strongly encourage applicants to limit the application narrative to no more than 60 pages, using the following standards:

- A "page" is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

In addition to the page-limit guidance on the application narrative section, we recommend that you adhere to the following page limits, using the standards listed above: (1) The abstract should be no more than one page, (2) the resumes of key personnel should be no more than two pages per person, and (3) a bibliography should be no more than three pages. Appendix A must include: (1) A logic model; (2) a Memorandum of Understanding or a Letter of Intent between the lead applicant, members of the consortium, other proposed training and TA providers, and other relevant partners; (3) a conceptual framework for the project; and (4) person-loading charts and timelines. There are no page limits or standards for materials in Appendix A. The only optional materials that will be accepted are letters of support. Please note that our reviewers are not required to read optional materials.

Please note that any funded applicant's application abstract will be made available to the public.

3. *Submission Dates and Times:*

Applications Available: July 25, 2016.

Date of Pre-Application: Interested parties are invited to submit questions to the following email address: *TSPDgrants@ed.gov.* In the subject line of the email, please insert the text "CFDA 84.160C". Interested parties are invited to participate in a pre-application teleconference with staff from the Department at 3:00 p.m. on July 28, 2016. The teleconference number is: 800–369–1883, and the passcode is: 2888105. For further information about the pre-application teleconference, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Deadline for Transmittal of Applications: August 24, 2016.

Applications for grants under this competition must be submitted electronically using the *Grants.gov* Apply site (*Grants.gov*). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to *Other Submission Requirements* in section IV of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: October 24, 2016.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make an award by the end of FY 2016.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following Web site: *http://fedgov.dnb.com/webform.* A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, it may be 24 to 48 hours before you can access the information in, and submit an application through, *Grants.gov.*

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via *Grants.gov,* you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with *Grants.gov* as an AOR. Details on these steps are outlined at the following *Grants.gov* Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the *Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind Program* must be submitted electronically using the Governmentwide *Grants.gov* Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind Program at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.160, not 84.160C).

Please note the following:

- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by *Grants.gov* are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the *Grants.gov* system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the *Grants.gov* system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from *Grants.gov,* we will notify you if we are rejecting your application because it was date and time stamped by the *Grants.gov* system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through *Grants.gov.*
- You should review and follow the Education Submission Procedures for submitting an application through *Grants.gov* that are included in the application package for this competition to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to *Grants.gov* under News and Events on the Department's G5 system home page at *www.G5.gov.* In addition, for specific guidance and procedures for submitting an application through *Grants.gov,* please refer to the *Grants.gov* Web site at: *www.grants.gov/web/grants/applicants/apply-for-grants.html.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a read-only, non-modifiable Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF (*e.g.,* Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question—for example, the project narrative—is critical to a meaningful review of your proposal. For that reason, it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from *Grants.gov* an automatic notification of receipt that contains a *Grants.gov* tracking number. This notification indicates receipt by *Grants.gov* only, not receipt by the Department. *Grants.gov* will also notify you automatically by email if your application met all the *Grants.gov* validation requirements or if there were any errors (such as submission of your application by someone other than a registered Authorized Organization Representative or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by *Grants.gov,* the Department will retrieve your application from *Grants.gov* and send you an email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by *Grants.gov,* it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only, non-modifiable PDF; failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through *Grants.gov*, please contact the *Grants.gov* Support Desk, toll free, at 1–800–518–4726. You must obtain a *Grants.gov* Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the *Grants.gov* system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with *Grants.gov*, along with the *Grants.gov* Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the *Grants.gov* system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. We will contact you after we determine whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the *Grants.gov* system. We will not grant you an extension if you failed to fully register to submit your application to *Grants.gov* before the application deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the *Grants.gov* system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the *Grants.gov* system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Kristen Rhinehart-Fernandez, U.S. Department of Education, 400 Maryland Avenue SW., Room 5062, Potomac Center Plaza, Washington, DC 20202–2800. FAX: (202) 245–7591.

Your paper application must be submitted in accordance with the mail or hand-delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.160C), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.160C), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Special Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition, the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $150,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through SAM. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN), or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case, the Secretary establishes a data collection period.

4. *Performance Measures:* The Government Performance and Results Act of 1993 (GPRA) directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals.

The performance measures for this program are as follows:

(1) The number of individuals enrolled in the experiential learning program, by cohort.

(2) The average length of time each individual interacted with the local deaf community, by cohort.

(3) The number and percentage of individuals who successfully complete the experiential learning program, by cohort.

(4) The number and percentage of individuals who successfully pass the National Interpreter Certification test, by cohort.

(5) The average length of time for each individual to successfully pass the National Interpreter Certification test, by cohort.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Kristen Rhinehart-Fernandez, U.S. Department of Education, 400 Maryland Avenue SW., Room 5062, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–6103 or by email: *Kristen.Rhinehart@ed.gov.*

If you use a TDD or a TTY, call the Federal Relay Service, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site, you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 19, 2016.

Sue Swenson,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2016–17406 Filed 7–22–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Orders Granting Authority To Import and Export Natural Gas, To Import and Export Liquefied Natural Gas, To Vacate Authority, and Errata During June 2016

	FE Docket Nos.
BARCLAYS BANK PLC	16–127–NG.
FLINT HILLS RESOURCES, LP	15–169–LNG.
PAA NATURAL GAS STORAGE ULC	16–53–NG.
FLINT HILLS RESOURCES, LP	15–168–LNG.
HOUSTON PIPE LINE COMPANY LP	16–62–NG.
BG ENERGY MERCHANTS, LLC	16–74–NG.
SOUTHWEST ENERGY, L.P	16–64–NG.
IMPERIAL IRRIGATION DISTRICT	16–69–NG.
BP CANADA ENERGY MARKETING CORP	16–68–NG.
PENGROWTH ENERGY MARKETING CORPORATION	16–73–NG.
NEXEN ENERGY MARKETING U.S.A. INC	16–70–NG.
MERCURIA ENERGY AMERICA, INC	16–71–NG.
CONCORD ENERGY LLC	16–77–NG.
BP ENERGY COMPANY	16–72–LNG.
UNION GAS LIMITED	16–79–NG.
CONCORD ENERGY LLC	16–80–NG.
ENERGY SOURCE NATURAL GAS INC	16–75–NG.
ST. LAWRENCE GAS COMPANY, INC	16–76–NG.
J. ARON & COMPANY	16–82–NG.
INFINITE ENERGY, INC	16–81–NG.
MORGAN STANLEY CAPITAL GROUP INC	16–84–NG.

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during June 2016, it issued orders granting authority to import and export natural gas, to import and export liquefied natural gas (LNG), to vacate authority, and errata. These orders are summarized in the attached appendix and may be found on the FE Web site at *http://energy.gov/fe/listing-doefe-authorizationsorders-issued-2016.*

They are also available for inspection and copying in the U.S. Department of Energy (FE–34), Division of Natural Gas Regulation, Office of Regulation and International Engagement, Office of Fossil Energy, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on July 19, 2016.

John A. Anderson,

Director, Office of Regulation and International Engagement, Office of Oil and Natural Gas.

APPENDIX

DOE/FE ORDERS GRANTING IMPORT/ EXPORT AUTHORIZATIONS

Order No.	Date	Docket No.	Company	Description
3706–A	06/09/16	15–127–NG	Barclays Bank Plc	Order 3706–A vacating Order 3706 granting blanket authority to import natural gas from Canada.
3822	06/13/16	15–169–LNG	Flint Hills Resources, LP	Order 3822 granting blanket authority to export LNG to Free Trade Agreement Countries by truck, rail, barge, and non-barge waterborne vessels.
3828–A	06/16/16	16–53–NG	PAA Natural Gas Storage ULC	Order 3828–A vacating Order 3828 granting blanket authority to import/export natural gas from/to Canada.
3829-Errata	06/06/16	15–168–LNG	Flint Hills Resources, LP	Errata adding API as intervenor.
3834–A	06/27/16	16–62–NG	Houston Pipe Line Company LP	Order 3834–A vacating Order 3834 granting blanket authority to import/export natural gas from/to Mexico.
3841	06/09/16	16–74–NG	BG Energy Merchants, LLC	Order 3841 granting blanket authority to import/export natural gas from/to Canada/Mexico.
3842	06/09/16	16–64–NG	Southwest Energy, L.P	Order 3842 granting blanket authority to import/export natural gas from/to Canada/Mexico.
3843	06/09/16	16–69–NG	Imperial Irrigation District	Order 3843 granting blanket authority to import/export natural gas from/to Mexico.
3844	06/09/16	16–68–NG	BP Canada Energy Marketing Corp.	Order 3844 granting blanket authority to import/export natural gas from/to Canada.
3845	06/09/16	16–73–NG	Pengrowth Energy Marketing Corporation.	Order 3845 granting blanket authority to import natural gas from Canada.
3847	06/10/16	16–70–NG	Nexen Energy Marketing U.S.A. Inc.	Order 3847 granting blanket authority to import/export natural gas from/to Canada/Mexico.

Order No.	Date	Docket No.	Company	Description
3848	06/10/16	16–71–NG	Mercuria Energy Marketing, Inc	Order 3848 granting blanket authority to import/export natural gas from/to Canada/Mexico.
3849	06/13/16	16–77–NG	Concord Energy LLC	Order 3849 granting blanket authority to import/export natural gas from/to Canada/Mexico.
3850	06/13/16	16–72–LNG	BP Energy Company	Order 3850 granting blanket authority to import LNG from various sources by vessel.
3851	06/16/16	16–79–NG	Union Gas Limited	Order 3851 granting blanket authority to import/export natural gas from/to Canada.
3852	06/16/16	16–80–NG	Concord Energy LLC	Order 3852 granting blanket authority to import/export natural gas from/to Canada.
3853	06/17/16	16–75–NG	Energy Source National Gas Inc	Order 3853 granting blanket authority to import/export natural gas from/to Canada.
3854	06/16/16	16–76–NG	St. Lawrence Gas Company, Inc	Order 3854 granting blanket authority to import natural gas from Canada.
3855	06/17/16	16–82–NG	J. Aron & Company	Order 3855 granting blanket authority to import/export natural gas from/to Canada/Mexico.
3856	06/17/16	16–81–NG	Infinite Energy, Inc	Order 3856 granting blanket authority to import/export natural gas from/to Canada.
3857	06/21/16	16–84–NG	Morgan Stanley Capital Group Inc.	Order 3857 granting blanket authority to import/export natural gas from/to Canada/Mexico.

[FR Doc. 2016–17473 Filed 7–22–16; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0466, 3060–0799 and 3060–1078]

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before August 24, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0466.

Title: Sections 73.1201, 74.783 and 74.1283, Station Identification.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not for-profit institutions; State, local or Tribal Government.

Number of Respondents and Responses: 24,083 respondents; 24,083 responses.

Estimated Time per Response: 0.166–1 hour.

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or maintain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 151, 152, 154(i), 303, 307 and 308.

Total Annual Burden: 23,249 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.1201(a) requires television broadcast licensees to make broadcast station identification announcements at the beginning and ending of each time of operation, and hourly, as close to the hour as feasible, at a natural break in program offerings. Television and Class A television broadcast stations may make these announcements visually or aurally.

47 CFR 74.783(b) requires licensees of television translators whose station identification is made by the television station whose signals are being rebroadcast by the translator, must secure agreement with this television station licensee to keep in its file, and available to FCC personnel, the translator's call letters and location, giving the name, address and telephone number of the licensee or his service representative to be contacted in the event of malfunction of the translator. It shall be the responsibility of the translator licensee to furnish current information to the television station licensee for this purpose.

47 CFR 73.1201(b)(1) requires that the official station identification consist of the station's call letters immediately followed by the community or communities specified in its license as the station's location. The name of the licensee, the station's frequency, the station's channel number, as stated on the station's license, and/or the station's network affiliation may be inserted between the call letters and station location. Digital Television (DTV) stations, or DAB Stations, choosing to include the station's channel number in the station identification must use the station's major channel number and may distinguish multicast program streams. For example, a DTV station with major channel number 26 may use 26.1 to identify a High Definition Television (HDTV) program service and 26.2 to identify a Standard Definition Television (SDTV) program service. A radio station operating in DAB hybrid mode or extended hybrid mode shall identify its digital signal, including any free multicast audio programming streams, in a manner that appropriately alerts its audience to the fact that it is listening to a digital audio broadcast. No other insertion between the station's call letters and the community or communities specified in its license is permissible. A station may include in its official station identification the name of any additional community or communities, but the community to which the station is licensed must be named first.

47 CFR 74.783(e) permits low power TV permittees or licensees to request to be assigned four-letter call signs in lieu of the five-character alpha-numeric call signs.

47 CFR 74.1283(c)(1) requires a FM translator station licensee whose identification is made by the primary station must arrange for the primary station licensee to furnish the translator's call letters and location (name, address, and telephone number of the licensee or service representative) to the FCC. The licensee must keep this information in the primary station's files.

OMB Control No.: 3060–0799.

Title: FCC Ownership Disclosure Information for the Wireless Telecommunications Services.

Form No.: FCC Form 602.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit; Not-for-profit institutions; and State, Local or Tribal government.

Number of Respondents and Responses: 4,115 respondents and 4,115 responses.

Estimated Time per Response: .5 hours–1.5 hours.

Frequency of Response: On occasion reporting requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection of this information is contained in sections 154(i), 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended. The statutory authority for this collection of this information is contained in sections 154(i), 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended.

Total Annual Burden: 5,217 hours.

Total Annual Cost: $762,300.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general there is no need for confidentiality. On a case by case basis, the Commission may be required to withhold from disclosure certain information about the location, character, or ownership of a historic property, including traditional religious sites.

Needs and Uses: The FCC Form 602 is necessary to obtain the identity of the filer and to elicit information required by section 1.2112 of the Commission's rules regarding: (1) Persons or entities holding a 10 percent or greater direct or indirect ownership interest or any general partners in a general partnership holding a direct or indirect ownership interest in the applicant ("Disclosable Interest Holders"); and (2) All FCC-regulated entities in which the filer or any of its Disclosable Interest Holders owns a 10 percent or greater interest. The data collected on the FCC Form 602 includes the FCC Registration Number (FRN), which serves as a "common link" for all filings an entity has with the FCC. The Debt Collection Improvement Act of 1996 requires that entities filing with the Commission use an FRN. The FCC Form 602 was designed for, and must be filed electronically by, all licensees that hold licenses in auctionable services.

The FCC Form 602 is comprised of the Main Form containing information regarding the filer and the Schedule A is used to collect ownership data pertaining to the Disclosable Interest Holder(s). Each Disclosable Interest Holder will have a separate Schedule A. Thus, a filer will submit its FCC Form 602 with multiple copies of Schedule A, as necessary, to list each Disclosable Interest Holder and associated information.

OMB Control Number: 3060–1078.

Title: Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, CG Docket No. 04–53.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; Individuals or households.

Number of Respondents and Responses: 5,443,062 respondents; 5,443,062 responses.

Estimated Time per Response: 1–10 hours (average per response).

Frequency of Response: Recordkeeping requirement; On occasion reporting requirements; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is the CAN–SPAM Act of 2003, 15 U.S.C. 7701–7713, Public Law 108–187, 117 Stat. 2719.

Total Annual Burden: 30,254,373 hours.

Total Annual Cost: $12,935,843.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's updated system of records notice (SORN), FCC/CGB–1, "Informal Complaints, Inquiries and Requests for Dispute Assistance", which became effective on September 24, 2014.

Privacy Impact Assessment: The Privacy Impact Assessment (PIA) for Informal Complaints and Inquiries was completed on June 28, 2007. It may be reviewed at *http://www.fcc.gov/omd/privacyact/Privacy5FImpact5FAssessment.html.* The Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions to the SORN.

Needs and Uses: The reporting requirements included under this OMB Control Number 3060–1078 enable the Commission to collect information regarding violations of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN–SPAM Act). This information is used to help wireless subscribers stop receiving unwanted commercial mobile services messages. On August 12, 2004, the Commission released an Order, Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, CG Docket No. 04–53, FCC 04–194, published at 69 FR 55765, September 16, 2004, adopting rules to prohibit the sending of commercial messages to any address referencing an Internet domain name associated with wireless subscribers' messaging services, unless the individual addressee has given the sender express prior authorization. The information collection requirements consist § 64.3100(a)(4), (d), (e) and (f) of the Commission's rules.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2016–17426 Filed 7–22–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0742, 3060–0207]

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before August 24, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0742.

Title: Sections 52.21 through 52.36, Telephone Number Portability, 47 CFR part 52, subpart (C) and CC Docket No. 95–116.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 3,631 respondents; 10,002,005 responses.

Estimated Time per Response: 4 minutes—10 hours.

Frequency of Response: On occasion and one time reporting requirements, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 152, 154(i), 201–205, 215, 251(b)(2), 251(e)(2) and 332 of the Communications Act of 1934, as amended.

Total Annual Burden: 673,460 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact.

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information to the Commission. If the respondents wish confidential treatment of their information, they may request confidential treatment under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: Section 251(b)(2) of the Communications Act of 1934, as amended, requires LECs to "provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." Through the LNP process, consumers have the ability to retain their phone number when switching telecommunications service providers, enabling them to choose a provider that best suits their needs and enhancing competition. In the *Porting Interval Order and Further Notice,* the Commission mandated a one business day porting interval for simple wireline-to-wireline and intermodal port requests. The information collected in the standard local service request data fields is necessary to complete simple wireline-to-wireline and intermodal ports within the one business day porting interval mandated by the Commission and will be used to comply with Section 251 of the Telecommunications Act of 1996.

OMB Control Number: 3060–0207.

Title: Part 11—Emergency Alert System (EAS), Order, FCC 16–32.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local or tribal government.

Number of Respondents and Responses: 63,080 respondents; 3,596,546 responses.

Estimated Time per Response: 1 hour (EAS Participants); 20 hours (SECCs).

Frequency of Response: One-time reporting requirement and recordkeeping requirement.

Obligation to Respond: Obligatory for all entities required to participate in EAS. Statutory authority for this collection of information is contained in 47 U.S.C. 154(i) and 606 of the Communications Act of 1934, as amended.

Total Annual Burden: 110,476 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No Impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: Part 11 contains rules and regulations addressing the nation's Emergency Alert System (EAS). The EAS provides the President with the capability to provide immediate communications and information to the general public at the national, state and local area level during periods of national emergency. The EAS also provides state and local governments and the National Weather Service with the capability to provide immediate communications and information to the general public concerning emergency situations posing a threat to life and property. State and local use of the EAS is required to be described in State EAS Plans that are administered by State Emergency Communications Committees (SECC) and submitted to the FCC for approval.

In the *Third Report and Order* in EB Docket No. 04–296, FCC 11–12, the Commission adopted rules establishing a regulatory structure for a national test of the EAS. In order for the Commission to determine the extent to which the test, and by extension the EAS, was successful, the FCC adopted rules requiring EAS Participants, within forty five (45) days of the date of the first national EAS test, to record and submit to the Commission the following test-related diagnostic information for each alert received from each message source monitored at the time of the national test:

- Whether they received the alert message during the designated test;
- whether they retransmitted the alert;
- if they were not able to receive and/or transmit the alert, their 'best effort' diagnostic analysis regarding the cause(s) for such failure;
- a description of their station identification and level of designation (PEP, LP–1, etc.);
- the date/time of receipt of the EAN message by all stations; the date/time of PEP station acknowledgement of receipt of the EAN message to FOC;
- the date/time of initiation of actual broadcast of the Presidential message;
- the date/time of receipt of the EAT message by all stations;
- who they were monitoring at the time of the test, and the make and
- model number of the EAS equipment that they utilized.

The *Third Report and Order* indicates that the national tests of EAS, and related information collections will likely be carried out on an annual basis. On March 10, 2010, OMB approved the collection as indicated by the related Notice of Office of Management and Budget Action notification.

The FCC is submitting this information collection to the Office of Management and Budget (OMB) as a revision of the previously approved information collection that established the mandatory Electronic Test Reporting System (ETRS) that EAS Participants must utilize to file identifying and test result data as part of their participation in nationwide EAS testing. Specifically, the *Order* adopted in EB Docket No. 04–296, FCC 16–32, amends the State EAS Plan filing requirements set forth at Section 11.21 of the Commission's rules to require EAS Participants (*i.e.*, the broadcasters, cable systems, and other service providers subject to the FCC's EAS rules) to provide the following information to their respective SECC, who in turn will include such information in the State EAS Plan submitted to the Commission for approval:

- A description of any actions taken by the EAS Participant (acting individually, in conjunction with other EAS Participants in the geographic area, and/or in consultation with state and local emergency authorities), to make EAS alert content available in languages other than English to its non-English speaking audience(s);
- A description of any future actions planned by the EAS Participant, in consultation with state and local emergency authorities, to provide EAS alert content in languages other than English to its non-English speaking audience(s), along with an explanation for the EAS Participant's decision to plan or not plan such actions; and
- Any other relevant information that the EAS Participant may wish to provide.

In addition, in the event that there is a material change to any of the information that EAS Participants are required to furnish their respective SECCs, EAS Participants must, within 60 days of the occurrence of such material change, submit aa letter to their respective SECCs, copying the Commission's Public Safety and Homeland Security Bureau (Bureau) that describe such change. The SECCs are required to incorporate the information in such letters as amendments to the State EAS Plans on file with the Bureau.

This information will be used by FCC staff to gauge the effectiveness of the EAS's capacity to disseminate in-language EAS emergency alert content to persons who communicate in a language other than English or may have a limited understanding of the English language; to determine whether private and local efforts to disseminate EAS multilingual content might be incorporated into the overall national EAS structure; and to confirm that private and local EAS multilingual operations are consistent with national plans, FCC regulations, and EAS operation.

The Commission expects that the costs to EAS Participants to comply with these reporting requirements will be minimal, and largely limited to internal administrative charges associated with drafting a brief statement, and submitting that statement, and any other relevant information that the EAS Participant may wish to provide to their SECC for inclusion into the State EAS Plan for the state in which the EAS Participant operates. The Commission further expects that the vast majority of EAS Participants are not engaged in multilingual EAS activities and therefore will need to submit nothing more than a very brief statement to their SECC explaining their decision to plan or not plan future actions to provide EAS alert content in languages other than English to their non-English speaking audience(s). For the presumably small percentage of EAS Participants that actually are engaged in multilingual EAS activities, the filing will merely require that they supply a summary of actions they already have taken in this regard. Accordingly, the FCC estimates that complying with the reporting requirement will take EAS Participants, on average, approximately one hour. The FCC estimates that compiling the EAS Participant summaries of multilingual EAS activities and incorporating such information into the State EAS Plan will take SECCs, on average, approximately 20 hours.

The following information collection contained in Part 11 may be impacted by these rule amendments:

Section 11.21 requires that state and local EAS plans be reviewed and approved by the Chief, Public Safety and Homeland Security, prior to implementation to ensure that they are consistent with national plans, FCC regulations, and EAS operation.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–17503 Filed 7–22–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0298, 3060–0400, 3060–0819]

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before August 24, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0298.

Title: Part 61, Tariffs (Other than Tariff Review Plan).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents and Responses: 2,840 respondents; 4,277 responses.

Estimated Time per Response: 30 hours–50 hours.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–155, 201–205, 208, 251–271, 403, 502, and 503 of the Communications Act of 1934, as amended.

Frequency of Response: On occasion, annual, biennial, and one-time reporting requirements.

Total Annual Burden: 156,080 hours.

Total Annual Cost: $1,307,670.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: On March 23, 2016, the Commission adopted a *Report and Order,* FCC 16–33, which reformed universal service for rate-of-return local exchange carriers (LECs). These reforms require approximately 95 rate-of-return LECs to make one-time tariff filings and NECA to make two tariff filings with the necessary support materials outside the normal annual filing period. We note that we are removing the requirement that competitive and incumbent LECs make a one-time intrastate tariff filing to establish Voice over Internet Protocol rates at intrastate levels, as this requirement has been met. Part 61 of the Commission's Rules, 47 CFR part 61, prescribes the framework for the initial establishment of and subsequent revisions to tariffs. The information collected through the carriers' tariffs and supporting documentation is used by the Commission and state commissions to determine whether the services are offered in a just and reasonable manner.

OMB Control Number: 3060–0400.

Title: Part 61, Tariff Review Plan (TRP).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 2,840 respondents; 5,437 responses.

Estimated Time per Response: 0.5 hours–53 hours.

Frequency of Response: On occasion, annual, biennial, and one-time reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 201, 202, 203, and 251(b)(5) of the Communications Act of 1934, as amended.

Total Annual Burden: 66,000 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Respondents are not being asked to submit confidential information to the Commission. If the Commission requests respondents to submit information which respondents believe are confidential, respondents may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: On March 23, 2016, the Commission adopted the Rate-of-Return Order, FCC 16–33, which reformed universal service for rate-of-return local exchange carriers (LECs). These reforms require rate-of-return LECs to make tariff filings with the necessary support materials outside the normal tariff filing period. We note that at this time, we are removing the requirement that competitive and incumbent LECs make a one-time intrastate tariff filing to establish Voice over Internet Protocol rates at intrastate levels, as this requirement has been met.

Sections 201, 202, and 203 of the Communications Act of 1934, as amended (the Act) require common carriers to establish just and reasonable charges, practices, and regulations for their interstate telecommunications services provided. For services that are still covered under Section 203, tariff schedules containing charges, rates, rules, and regulations must be filed with the Commission. Part 61 of the Commission's Rules, 47 CFR part 61, prescribes the framework for the establishment of and subsequent revisions to tariffs. Certain local exchange carriers are required to submit a biennial or annual Tariff Review Plan (TRP) in partial fulfillment of cost support material required by Part 61. The Commission developed the TRP to minimize reporting burdens on reporting incumbent local exchange carriers (ILECs). TRPs set forth the summary material ILECs file to support revisions to the rates in their interstate access service tariffs. For those services still requiring cost support, TRPs assist the Commission in determining whether ILEC access charges are just and reasonable as required under the Act.

OMB Control Number: 3060–0819.

Title: Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund.

Form Numbers: FCC Form 497, 555, & 481.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households and business or other for-profit.

Number of Respondents: 21,162,260 respondents; 23,956,240 responses.

Estimated Time per Response: .0167 hours–250 hours.

Frequency of Response: Annual and on occasion reporting requirements and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 13,484,412 hours.

Total Annual Cost: $937,500.

Privacy Act Impact Assessment: Yes. The Commission completed a Privacy Impact Assessment (PIA) for some of the information collection requirements contain in this collect. The PIA was published in the **Federal Register** at 78 FR 73535 on December 6, 2013. The PIA may be reviewed at: *http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.*

Nature and Extent of Confidentiality: Some of the requirements contained in this information collection do affect individuals or households, and thus, there are impacts under the Privacy Act. The FCC's system of records notice (SORN), FCC/WCB–1, "Lifeline Program." The Commission will use the information contained in FCC/WCB–1 to cover the personally identifiable information (PII) that is required as part of the Lifeline Program ("Lifeline"). As required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Commission also published a SORN, FCC/WCB–1 "Lifeline Program" in the **Federal Register** on December 6, 2013 (78 FR 73535).

Also, respondents may request materials or information submitted to the Commission or to the Universal Service Administrative Company (USAC or Administrator) be withheld from public inspection under 47 CFR 0.459 of the FCC's rules. We note that USAC must preserve the confidentiality of all data obtained from respondents; must not use the data except for purposes of administering the universal service programs; and must not disclose data in company-specific form unless directed to do so by the Commission.

Needs and Uses: The Commission will submit this information collection after this comment period to obtain the full, three-year clearance from the Office of Management and Budget (OMB). The Commission also proposes several revisions to this information collection.

On April 27, 2016, the Commission released an order reforming its low-income universal service support mechanisms. Lifeline and Link Up Reform and Modernization; Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund, WC Docket Nos. 11–42, 09–197, 10–90, Third Further Notice of Proposed Rulemaking, Order on Reconsideration, and Further Report and Order, (*Lifeline Third Reform Order*). This revised information collection addresses requirements to carry out the programs to which the Commission committed itself in the *Lifeline Third Reform Order.* Under this information collection, the Commission seeks to revise the information collection to comply with the Commission's new rules, adopted in the *Lifeline Third Reform Order,* regarding phasing out support for mobile voice over the next six years, requiring Eligible Telecommunications Carriers (ETCs) to certify compliance with the new minimum service requirements, creating a new ETC designation for Lifeline Broadband Providers (LBPs), updating the obligations to advertise Lifeline offerings, modifying the non-usage de-enrollment requirements within the program, moving to rolling annual subscriber recertification, and streamlining the first-year ETC audit requirements. Also, the Commission seeks to update the number of respondents for all the existing information collection requirements, thus increasing the total burden hours for some requirements and decreasing the total burden hours for other requirements. Finally, the Commission seeks to revise the FCC Forms 555, 497, and 481 to incorporate the new Commission rules and modify the filings for FCC Forms 555 and 497 to include detailed field descriptions.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–17502 Filed 7–22–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10499, Columbia Savings Bank, Cincinnati, Ohio

Notice is hereby given that the Federal Deposit Insurance Corporation ("FDIC") as Receiver for Columbia Savings Bank, Cincinnati, Ohio ("the Receiver") intends to terminate its receivership for said institution. The FDIC was appointed receiver of Columbia Savings Bank on May 23, 2014. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: July 19, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–17453 Filed 7–22–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 10, 2016.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *The Shirley Oliver Dynasty Trust, Dallas, Texas; the James H. Oliver Exempt Trust and the James H. Oliver Non-Exempt Trust, both of Grand Island, Nebraska; Gregory Oliver, Dallas, Texas; Robert Almquist, Wood River, Nebraska; and Thomas Emerton, Cairo, Nebraska;* to retain control of Platte Valley Cattle Company, Grand Island, Nebraska, parent of Town and Country Bank, Ravenna, Nebraska.

Board of Governors of the Federal Reserve System, July 20, 2016.

Margaret Shanks,

Deputy Secretary of the Board.

[FR Doc. 2016–17482 Filed 7–22–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 22, 2016.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528. Comments can also be sent electronically to or *Comments.applications@rich.frb.org*:

1. *First Citizens Bancshares*, Inc., Raleigh, North Carolina; to acquire at least 5 percent but less than 9 percent of the voting securities of Carter Bank & Trust, Martinsville, Virginia.

B. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *The Bridger Company*, Bridger, Montana; to acquire 100 percent of the voting shares of Montana State Bank, Plentywood, Montana.

Board of Governors of the Federal Reserve System, July 20, 2016.

Margaret Shanks,

Deputy Secretary of the Board.

[FR Doc. 2016–17480 Filed 7–22–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 15, 2016.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Citizens Bancorp, Inc.*, Cadott, Wisconsin; to engage, de novo, in extending credit and servicing loans pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, July 20, 2016.

Margaret Shanks,

Deputy Secretary of the Board.

[FR Doc. 2016–17481 Filed 7–22–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (''Commission'' or ''FTC'').

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as

required by the Paperwork Reduction Act (“PRA”). The FTC is seeking public comments on its proposal to extend for an additional three years the current PRA clearance for information collection requirements in its Telemarketing Sales Rule (“TSR”). That clearance expires on August 31, 2016.

DATES: Comments must be submitted on or before August 24, 2016.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “TSR PRA Comment, FTC File No. P094400” on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/tsrrulepra2* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements for the TSR should be addressed by mail to Craig Tregillus, Staff Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Room CC–8607, 600 Pennsylvania Ave. NW., Washington, DC 20580, or by telephone to (202) 326–2970.

SUPPLEMENTARY INFORMATION: On April 14, 2016, the Commission requested public comment on the information collection requirements and related PRA burden estimates associated with the TSR. 81 FR 22082 (“April 14, 2016 Notice”). Pursuant to the OMB regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.*, the FTC is providing this second opportunity for public comment while seeking OMB approval to renew clearance for those information collection requirements.

In response to its prior request for public comment, the Commission received ten comments, most of which were either non-germane or not directly responsive to the nature of the public comments sought. As required by the PRA, the Commission had sought public comments specifically on the following: (1) Whether the recordkeeping, disclosure, and reporting requirements are necessary, including whether the resulting information will be practically useful; (2) the accuracy of the FTC’s burden estimates, including whether the methodology and assumptions used are valid; (3) how to improve the quality, utility, and clarity of the disclosure requirements; and (4) how to minimize the burden of providing the required information to consumers.

None of the public comments directly addressed the above and, lacking independent reason thus far to revise its burden estimates, the FTC will submit for OMB review, contemporaneous with this published Notice, its previously published burden estimates on the TSR’s disclosure, recordkeeping, and reporting requirements. For more details about the Rule requirements, the background behind these information collection provisions, and the FTC’s burden estimates and methodology behind them, see the April 14, 2016 Notice.

To clarify for purposes of receiving public comments for this second Notice, the disclosure, recordkeeping, and reporting requirements for which the Commission sought public comment concern such requirements imposed upon telemarketers and/or other sellers who are subject to, and not otherwise exempted under, the TSR. Some types of businesses are not covered by the TSR even though they conduct telemarketing campaigns that may involve some interstate telephone calls to sell goods or services. These three types of entities are not subject to the FTC’s jurisdiction, and not covered by the TSR:

- Banks, federal credit unions, and federal savings and loans
- common carriers—such as long-distance telephone companies and airlines—when they are engaging in common carrier activity
- non-profit organizations—those entities that are not organized to carry on business for their own, or their members,’ profit.

The above types of entities are not covered by the TSR because they are specifically exempt from the FTC’s jurisdiction. Nevertheless, any other for profit individual or company that contracts with one of these three types of entities to provide telemarketing services must comply with the TSR. Moreover, some types of calls also are not covered by the TSR, regardless of whether the entity making or receiving the call is covered. These include:

- Unsolicited calls from consumers
- calls placed by consumers in response to a catalog
- business-to-business calls that do not involve retail sales of nondurable office or cleaning supplies
- calls made in response to general media advertising (with some important exceptions)
- calls made in response to direct mail advertising (with some important exceptions)
- Political campaign calls protected by the First Amendment.

Public comments on the April 14, 2016 Notice ranged from a complaint about receiving repeated unsolicited “junk” telefaxes—to a complaint that the FTC fails to enforce the TSR—to a suggestion that the FTC consider ways to pro-actively thwart unsolicited calls to mobile phones in a vein similar to which “NoMoRobo” (*http://www.nomorobo.com*) blocks some unwanted robocalls (to date, Nomorobo works only with some landline carriers, and not with cell phones)—to a suggestion, more generally, “that better automation [be devised] in addressing the illegal calling issue.”

In response, the FTC notes that Federal Communication Commission rules, not the FTC’s TSR, address “junk” telefaxes. (See *https://www.fcc.gov/stop-unwanted-calls.*) To date, the FTC has brought at least 105 enforcement actions against companies and telemarketers for Do Not Call, abandoned call, robocall (*i.e.*, automated dialing technology to make calls that deliver prerecorded messages), and Registry violations (*https://www.ftc.gov/news-events/media-resources/do-not-call-registry/enforcement*). A variety of new technologies has increased the number of illegal telemarketing calls made to telephone numbers on the Registry. The net effect of these new technologies is that individuals and companies who do not care about complying with the Registry or other telemarketing laws are able to make more illegal telemarketing calls cheaply and in a manner that makes it difficult for the FTC and other law enforcement agencies to find them. The FTC continues to solicit ideas and assistance to combat illegal automated calls: *https://www.ftc.gov/news-events/press-releases/2015/03/ftc-announces-new-robocall-contests-combat-illegal-automated.* Moreover, the FTC in tandem with other law enforcement agencies continues to bring actions against illegal telemarketing calls: *https://www.ftc.gov/news-events/media-resources/do-not-call-registry/robocalls.* The FTC also continues to track how technology affects the Registry and the consumers and telemarketers who access it.

To reiterate, pursuant to its obligations under the PRA, the FTC seeks public comment on the necessity of its TSR recordkeeping, disclosure, and reporting requirements, whether the information resulting from those requirements will be practically useful, the accuracy of the FTC's associated PRA burden estimates, and how to improve the quality, utility, and clarity of the TSR's disclosure requirements while also minimizing the burden on affected entities to provide the required information to consumers.

Request for Comment: You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before August 24, 2016. Write "TSR PRA Comment, FTC File No. P094400" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which is . . . privileged or confidential" as provided in Section 6(f) of the FTC Act 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/tsrrulepra2,* by following the instructions on the web-based form. When this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write "TSR PRA Comment, FTC File No. P094400" on your comment and on the envelope, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before August 24, 2016. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *http://www.ftc.gov/ftc/privacy.htm.*

Comments on the recordkeeping, disclosure, and reporting requirements subject to review under the PRA should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395–5806.

David C. Shonka,
Acting General Counsel.

[FR Doc. 2016–17474 Filed 7–22–16; 8:45 am]

BILLING CODE 6750–01–P

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[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0074; Docket 2016–0053; Sequence 19]

Submission for OMB Review; Contract Funding—Limitation of Costs/Funds

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for extension of an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning limitation of costs/funds.

DATES: Submit comments on or before August 24, 2016.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0074, Contract Funding—Limitation of Costs/Funds". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0074, Contract Funding—Limitation of Costs/Funds" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0074, Contract Funding—Limitation of Costs/Funds.

Instructions: Please submit comments only and cite Information Collection 9000–0074, Contract Funding—Limitation of Costs/Funds, in all correspondence related to this collection. Comments received generally will be posted without change to *http://*

www.regulations.gov, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Kathlyn Hopkiins, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA 202–969–7226 or email *kathlyn.hopkins@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms performing under incrementally funded, cost-reimbursement Federal contracts are required to notify the contracting officer in writing whenever they have reason to believe—

(1) The costs the contractors expect to incur under the contracts in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost of the contracts; or (2) The total cost for the performance of the contracts will be greater or substantially less than estimated.

As a part of the notification, the contractors must provide a revised estimate of total cost. The frequency of this collection of information is variable, contingent upon both funding and spending patterns.

A notice was published in the **Federal Register** at 81 FR 21873 on April 13, 2016. No comments were received. However, three changes were made to the annual reporting burden estimates conveyed in the preliminary 60-day notice. First, the initial estimate included data on certain fixed-price and cost-sharing contracts, subsequently deemed not directly impacted by the FAR clauses 52.232–20 and 52.232–22; those data points have been removed from the estimate for this collection.

Accordingly, the number of contract actions has been reduced. Secondly, the number of responses per respondent has been reassessed at one per year in lieu of five; this is consistent with updated data, based on consultation with subject matter experts within the Government. Third, the estimated time to produce each funding letter was reduced from ½ hour to ⅓ hour, as office software applications continue to improve, making basic computations, word processing, and communication increasingly efficient.

B. Annual Reporting Burden

Respondents: 123,392.
Responses per Respondent: 1.
Total Annual Responses: 123,392.
Hours per Response: 0.33.
Total Burden Hours: 40,719.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0074, Contract Funding—Limitation of Costs/Funds, in all correspondence.

William Clark,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2016–17479 Filed 7–22–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–297 (CMS–L564)]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: the necessity and utility of the proposed information collection for the proper performance of the agency's functions; the accuracy of the estimated burden; ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by September 23, 2016.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ______, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–R–297 (CMS–L564) Request for Employment Information

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Employment Information; *Use:* Section 1837(i) of the Social Security Act provides for a special enrollment period for individuals who delay enrolling in Medicare Part B because they are covered by a group health plan based on their own or a spouse's current employment status. Disabled individuals with Medicare may also delay enrollment because they have large group health plan coverage based on their own or a family member's current employment status. When these individuals apply for Medicare Part B, they must provide proof that the group health plan coverage is (or was) based on current employment status. *Form Number:* CMS–R–297 (CMS–L564) (OMB control number: 0938–0787); *Frequency:* Once; *Affected Public:* Private sector (Business or other for-profits and Not-for-profit institutions); *Number of Respondents:* 15,000; *Total Annual Responses:* 15,000; *Total Annual Hours:* 5,000. (For policy questions regarding this collection contact Lindsay Scully at 410–786–6843.)

Dated: July 20, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–17478 Filed 7–22–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: State Court Improvement Program.

OMB No.: 0970–0307.

Description: The Court Improvement Program (CIP) is a mandatory formula grant funded under section 438 of the Social Security Act, and most recently reauthorized under the Child and Family Services Improvement and Innovation Act of 2012 (Pub. L. 112–34). The purpose of the CIP is to facilitate the handling of child welfare cases in the courts. All 50 states, Puerto Rico, and the District of Columbia receive grants under the program. The program requires two submissions annually from grantees that constitute information collections under the Paperwork Reduction Act.

The purpose of this notice is to request an extension of the Office of Management and Budget Control Number 0907–0307 permitting continued use of the information collections required by ACF–CB–PI–12–02. The burden estimates are provided below. The Administration on Children, Youth, and Families anticipates issuing a new Program Instruction for federal fiscal year 2017.

Following the publication of the first **Federal Register** notice, the Children's Bureau engaged in a number of outreach activities to seek additional input from grantees and experts in the field on how best to reduce grantee burden, ensure that the reporting process was useful to grantees, and maximize the ability to evaluate the program overall. These efforts have resulted in the decision to require one annual submission, as opposed to two submissions.

The annual submission will include: (1) A self-assessment, and (2) a strategic plan. The self-assessment requires the grantees to identify the topical work areas of the last year, identify strengths, challenges and need for technical assistance. The self-assessment has been designed with user/grantee input with the intention of minimizing burden and maximizing usefulness of the process and product to the grantee. The strategic plan identifies projects and activities and intended results for the coming year. The strategic plan was also developed with grantee input.

A full application will be due once every five years. The full application will require a five year strategic plan, letters of commitment from the highest court of appeal and state title IV–E/IV–B agency, a budget narrative, and a list of all statewide task force members.

Taken together, the changes reduce the overall burden hours from years past and those anticipated in the previous **Federal Register** notice by approximately 50%.

Respondents: Highest State Court.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Full Application	52	1	40	2,080
Updated Strategic Plan	52	1	12	624
Self-Assessment	52	1	36	1,772

Estimated Total Annual Burden Hours: 4,476.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–17403 Filed 7–22–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Health Center Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of class deviations from the requirements for competition and application period for the health center program.

SUMMARY: The Bureau of Primary Health Care (BPHC) is awarding funds to health centers transitioning to value-based models of care, improving the use of information in decision making, and increasing engagement in delivery system transformation.

SUPPLEMENTARY INFORMATION:

Intended Recipient of the Award: Approximately 1,380 Health Center Program award recipients.

Amount of Competitive Awards: Approximately $90 million will be awarded in FY 2016 through a one-time supplement.

Period of Supplemental Funding: Anticipated 12 month project period is September 1, 2016 through August 31, 2017.

CFDA Number: 93.224.

Authority: Section 330 of the Public Health Service Act, as amended (42 U.S.C. 254b, as amended).

Justification: Targeting the Nation's neediest populations and geographic areas, the Health Center Program supports more than 1,300 health centers that operate over 9,000 service delivery sites in every state, the District of Columbia, Puerto Rico, the Virgin Islands, and the Pacific Basin. Nearly 23 million patients received comprehensive, culturally competent, quality primary health care services through the Health Center Program award recipients in 2014.

The fiscal year (FY) 2016 Health Center Program Delivery System Health Information Investment (DSHII) funding will provide formula-based, one-time support for the purchase of health information technology (health IT) enhancements to accelerate health centers' transition to value-based models of care, improve efforts to share and use information to support better decisions, and increase engagement in delivery system transformation efforts. Grant funds will help health centers make strategic investments to enhance their health IT, implement new clinical and administrative workflows, develop new reports, and better prepare providers and staff to use health IT and data to achieve the quality, cost, and patient-centered goals of delivery system reforms. In addition, health centers that do not currently have a certified electronic health record (EHR) at all sites and in use by all providers must propose at a minimum to use DSHII funding to initiate and/or increase the number of sites and providers using a certified EHR. The investments will help health centers improve the quality and safety of services provided to the nation's most vulnerable populations.

FOR FURTHER INFORMATION CONTACT: Olivia Shockey, Expansion Division Director, Office of Policy and Program Development, Bureau of Primary Health Care, Health Resources and Services Administration at 301–443–9282 or *oshockey@hrsa.gov.*

Dated: July 18, 2016.

James Macrae,

Acting Administrator.

[FR Doc. 2016–17497 Filed 7–22–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Zhiyu Li, Ph.D., Mount Sinai School of Medicine: Based upon the evidence and findings of an investigation report by the Mount Sinai School of Medicine (MSSM) and additional analysis conducted by ORI in its oversight review, ORI found that Dr. Zhiyu Li, former Postdoctoral Fellow, MSSM, engaged in research misconduct in research that was supported by National Cancer Institute (NCI), National Institutes of Health (NIH), grant R21 CA120017. ORI found that falsified and/or fabricated data were included in the following published papers, submitted manuscript, poster presentation, and grant applications:

- Li, Z., Fallon, J., Mandeli, J., Wetmur, J., & Woo, S.L.C. "A Genetically Enhanced Anaerobic Bacterium for Oncopathic Therapy of Pancreatic Cancer." *JNCI* 100(19):1389–1400, October 2008 (hereafter referred to as "*JNCI* 2008") (Retracted 02/2010).
- Li, Z., Fallon, J., Mandeli, J., Wetmur, J., & Woo, S.L.C. "The Oncopathic Potency of *Clostridium perfringens* is Independent of its α-Toxin Gene." *HGT* 20:751–758, July 2009 (hereafter referred to as "*HGT* 2009") (Retracted 03/2010).
- Li, Z., Fallon, J., Mandeli, J., Wetmur, J., & Woo, S.L.C. "Oncopathic Bacteriotherapy with Engineered *C. perfringens* Spores is Superior and Complementary to Gemcitabine Treatment in an Orthotopic Murine Model of Pancreatic Cancer." Submitted for publication in *Can. Res.* (hereafter referred to as the "*Can. Res.* Manuscript 2009").
- Li, Z., Fallon, J., Mandeli, J., Wetmur, J., & Woo, S.L.C. "Oncopathic Bacteriotherapy with *Cp/plc-/sod-/PVL* is Complementary to Gemcitabine Treatment for Pancreatic Cancer in Mice." Presented at the 12th Annual Meeting of the American Society of Gene Therapy, May 27–30, 2009.
- R21 CA120017–02
- R21 CA120017 Final Progress Report
- R01 CA130897–01
- R01 CA130897–01 A1
- R01 CA130897–01 A2
- R01 CA130897–01 A2 Supplemental Material
- R01 CA148697–01

The *JNCI* 2008 and *HGT* 2009 papers were retracted, and the *Can. Res.* Manuscript 2009 was withdrawn.

ORI found that the Respondent intentionally, knowingly, and recklessly engaged in research misconduct by falsely claiming to have generated recombinant *Clostridium perfringens* (*Cp*) strains, *Cp/sod-, Cp/sod-/PVL,* and *Cp/plc-/sod-/PVL,* to depict the effects of recombinant *Cp* strains on their ability to destroy cancer cells in a murine model, when these bacterial strains were not produced nor the data derived from them, and by falsifying histopathological data reported in fifty-seven (57) images in two (2) published papers, one (1) submitted manuscript, two (2) poster presentations, and seven (7) of Respondent's supervisor's grant applications and fabricating the corresponding nineteen (19) summary bar graphs that were based on those false images.

Specifically, Respondent trimmed and used portions of Figure 6 (right panel) of a draft R21 CA120017–01 grant application, representing an image of liver tumor two (2) days after injection of *Cp/plc-* bacteria, to represent unrelated results from different experiments in:

- Figures 5D and 7C (left panel), grant R21 CA120017 Final Progress Report
- Figure 6A, grant R01 CA130897–01
- Figures 9D and 17A (top left, middle, and right panels and bottom left panel), grant R01 CA130897–01 A1

- Figures 6D and 9C (left panel), grant R01 CA130897–01 A2
- Figure 2A (left, middle, and right panels) in R01 CA130897–01 A2 Supplemental Material
- Figures 4D and 7C (left panel), grant R01 CA148697–01
- Figure 4D (left panel), *JNCI* 2008
- Figure 3A (left panel), *HGT* 2009
- Figure 1A (left, middle and right panels), *Can. Res.* Manuscript 2009
- Figure labeled ''Intratumoral Bacterial Titers and Quantification of Tumor Necrosis'' (top left panel), *AGST* 2009 Poster presentation 2

Respondent trimmed and used portions of Figure 6C of R21 CA120017–02, representing pancreatic tumor five (5) days after injection of *Cp/sod-* bacteria, to represent results from different experiments in:

- Figures 5E, 6E and 7C (right panel), grant R21 CA120017 Final Progress Report
- Figures 9E, 10E, and 13C (right panel), grant R01 CA130897–01 A1
- Figures 6E, 7E and 9C (right panel), grant R01 CA130897–01 A2
- Figures 4E, 5E and 7C (right panel), grant R01 CA148697–01
- Figure 4D (right panel), *JNCI* 2008
- Figure 3A (middle and right panels), *HGT* 2009
- Figure labeled ''Intratumoral Bacterial Titers and Quantification of Tumor Necrosis'' (top right and middle panels), *AGST* 2009 Poster presentation 2

Respondent trimmed and used a portion of a figure that was reported as mouse pancreatic tumor tissue treated with control liposomes in four (4) figures (Figure 6D in R21 CA120017 Final Progress Report, Figure 10D in R01 CA130897–01 A1, Figure 7D in R01 CA130897–01 A2, and Figure 5D in R01 CA148697–01), to represent results from mouse pancreatic tumor tissue not treated with control liposomes in:

- Figures 7C (middle panel), grant R21 CA120017 Final Progress Report
- Figure 13C (left panel), grant R01 CA130897–01 A1
- Figures 9C (middle panel), grant R01 CA130897–01 A2
- Figure 7C (middle panel), grant R01 CA148697–01
- Figure 4D (middle panel), *JNCI* 2008
- Figure entitled ''Oncopathic Potency of *Cp/sod-/PVL* in Tumor-bearing Mice'' row C (left panel), *AGST* 2009 Poster presentation 1

Respondent falsified at least four (4) and possibly eight (8) images by using and relabeling Figures 4A (left panel), 4B (right panel), and 4B (left panel) in *JNCI* 2008 and Figure 1B (center panel) of *Cancer Res.* Manuscript 2009, to represent different experimental conditions in Figures 3C (middle panel), 3B (left panel), 3C (right panel), and 3D (left panel) in *HGT* 2009 respectively.

Respondent trimmed and used portions of Figure 4E (right panel) in *JNCI* 2008, representing pancreatic tumor from mice injected with *Cp/sod-/PVL* bacteria, to represent mice injected with *Cp/plc-/sod-/PVL* bacteria in the following:

- Figure 2, row B (right panel), R01 CA130897 01 A2 Supplemental Material
- Figure 3, row D (right panel), *HGT* 2009
- Figure entitled ''Intratumoral bacterial Titers and Quantification of Tumor Necrosis'' (bottom right panel), *AGST* 2009 Poster presentation 2
- Figure 1, row B (right panel), *Can. Res.* Manuscript 2009

The Respondent also fabricated the resulting quantitative data in nineteen (19) summary bar-graphs based on the false histopathological images in:

- Figure 7C, grant R21 CA120017 Final Progress Report
- Figures 13C and 17B, grant R01 CA130897–01 A1
- Figure 9C, grant R01 CA130897–01 A2
- Figure 2A–B, grant R01 CA130897–01 A2 Supplemental Material
- Figure 7C, grant R01 CA148697–01
- Figures 4A, B, D, and E, *JNCI* 2008
- Figures 3A–D, *HGT* 2009
- Figure 1C, *Can. Res.* Manuscript 2009
- Figure entitled ''Oncopathic Potency of *Cp/sod-/PVL* in Tumor-bearing Mice'' graph (C) in *AGST* 2009 Poster presentation 1
- Figure entitled ''Intratumoral Bacterial Titers and Quantification of Tumor Necrosis'' top and bottom row graphs in *AGST* 2009 Poster presentation 2

The following administrative actions have been implemented for a period of five (5) years, beginning on July 3, 2016:

(1) Respondent is debarred from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement programs of the United States Government referred to as ''covered transactions'' pursuant to HHS' Implementation (2 CFR part 376 *et seq*) of Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension, 2 CFR part 180 (collectively the ''Debarment Regulations''); and

(2) Respondent is prohibited from serving in any advisory capacity to the U.S. Public Health Service (PHS) including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8800.

Kathryn M. Partin,

Director, Office of Research Integrity.

[FR Doc. 2016–17495 Filed 7–22–16; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Office of Direct Service and Contracting Tribes National Indian Health Outreach and Education—Health Reform Funding Opportunity

Announcement Type: New Limited Competition.

Funding Announcement Number: HHS–2016–IHS–NIHOE–3–Health–Reform–0001.

Catalog of Federal Domestic Assistance Number: 93.933.

Key Dates

Application Deadline Date: August 25, 2016.

Review Date: August 29, 2016.

Earliest Anticipated Start Date: September 15, 2016.

Proof of Non-Profit Status Due Date: August 25, 2016.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) Office of Direct Service and Contracting Tribes (ODSCT) and the Office of Resource Access and Partnerships (ORAP) is accepting cooperative agreement applications for the National Indian Health Outreach and Education III (NIHOE–III)–Health Reform funding opportunity that includes outreach and education activities on the following: The Patient Protection and Affordable Care Act, Public Law 111–148, as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111–152, collectively known as the Affordable Care Act (ACA), and the Indian Health Care Improvement Act (IHCIA), as amended. This program is authorized under the Snyder Act, codified at 25 U.S.C. 13, and the Transfer Act, codified at 42 U.S.C. 2001(a). This program is described in the Catalog of Federal Domestic Assistance under 93.933.

Background

The NIHOE III—Health Reform program carries out health program objectives in the American Indian/Alaska Native (AI/AN) community in the interest of improving the quality of and access to health care for all 567 Federally-recognized Tribes including Tribal governments operating their own health care delivery systems through self-determination contracts and compacts with the IHS and Tribes that continue to receive health care directly from the IHS. This program addresses health policy and health program issues and disseminates educational information to all AI/AN Tribes and villages. These Health Reform awards require that public forums be held at Tribal educational consumer conferences to disseminate changes and updates on the latest health care information. These awards also require that regional and national meetings be coordinated for information dissemination as well as for the inclusion of planning and technical assistance and health care recommendations on behalf of participating Tribes to ultimately inform IHS and the Department of Health and Human Services (HHS) based on Tribal input through a broad based consumer network.

Purpose

The purpose of this IHS cooperative agreement announcement is to encourage national Indian organizations, IHS, and Tribal partners to work together to conduct ACA/IHCIA training and technical assistance throughout Indian Country. Under the Limited Competition NIHOE Health Reform Cooperative Agreement program, the overall program objective is to improve Indian health care by conducting training and technical assistance across AI/AN communities to ensure that the Indian health care system and all AI/ANs are prepared to take advantage of the new health insurance coverage options which will improve the quality of and access to health care services and increase resources for AI/AN health care. The goal of this program announcement is to coordinate and conduct training and technical assistance on a national scale for the 567 Federally-recognized Tribes and Tribal organizations on the changes, improvements and authorities of the ACA and IHCIA and the health insurance options available to AI/AN through the Health Insurance Marketplace.

Limited Competition Justification

Competition for the award included in this announcement is limited to national Indian organizations with at least ten years of experience providing training, education and outreach on a national scale. This limitation ensures that the awardee will have (1) a national information-sharing infrastructure which will facilitate the timely exchange of information between the HHS, Tribes, and Tribal organizations on a broad scale; (2) a national perspective on the needs of AI/AN communities that will ensure that the information developed and disseminated through the projects is culturally appropriate, useful and addresses the most pressing needs of AI/AN communities; and (3) established relationships with Tribes and Tribal organizations that will foster open and honest participation by AI/AN communities. Regional and local organizations will not have the mechanisms in place to conduct communication on a national level, nor will they have an accurate picture of the health care needs facing AI/ANs nationwide. Organizations with less experience will lack the established relationships with Tribes and Tribal organizations throughout the country that will facilitate participation and the open and honest exchange of information between Tribes and HHS. However, awardees will be expected to work with regional and local organizations to achieve the goals herein. With the limited funds available for these health reform projects, HHS must ensure that the training, education and outreach efforts described in this announcement reach the widest audience possible in a timely fashion, are appropriately tailored to the needs of AI/AN communities throughout the country, and come from a source that AI/ANs recognize and trust. For these reasons, this is a limited competition announcement.

II. Award Information

Type of Award

Cooperative Agreement.

Estimated Funds Available

The total amount of funding identified for the current funding cycle which covers fiscal years (FY) 2016–2018 is approximately $600,000. Individual award amounts are anticipated to be $200,000 per FY, respectively, if awarded to two entities applying separately. Further details are provided in the applicable section components. The amount of funding available for both competing and continuation awards issued under this announcement is subject to the availability of appropriations and budgetary priorities of the Agency. The IHS is under no obligation to make awards that are selected for funding under this announcement.

Two entities applying separately to accomplish appropriately divided program activities:

1. One entity will apply for $75,000 per FY or $225,000 total.
2. The second entity will apply for the remaining $125,000 per FY or $375,000 total.

Anticipated Number of Awards

Approximately two awards will be issued under this program announcement.

Project Period

The project period will be for three years and will run consecutively from September 15, 2016 to September 14, 2019.

Cooperative Agreement

Cooperative agreements awarded by the HHS are administered under the same policies as a grant. The funding agency (IHS) is required to have substantial programmatic involvement in the project during the entire award segment. Below is a detailed description of the level of involvement required for both IHS and the grantee. IHS will be responsible for activities listed under section A and the grantee will be responsible for activities listed under section B as stated:

Substantial Involvement Description for Cooperative Agreement

A. IHS Programmatic Involvement

(1) The IHS assigned program official will work in partnership with the awardee in all decisions involving strategy, hiring of consultants, deployment of resources, release of public information materials, quality assurance, coordination of activities, any training activities, reports, budget and evaluation. Collaboration includes data analysis, interpretation of findings and reporting.

(2) The IHS assigned program official will approve the training curriculum content, facts, delivery mode, pre- and post-assessments, and evaluation before any materials are printed and the training is conducted.

(3) The IHS assigned program official will review and approve all of the final draft products before they are published and distributed.

B. Grantee Cooperative Agreement Award Activities

The awardee must comply with relevant Office of Management and Budget (OMB) Circular provisions regarding lobbying, any applicable lobbying restrictions provided under other law, and any applicable restriction on the use of appropriated funds for lobbying activities. Awardees are expected to:

(1) Foster collaboration across the Indian health care system to encourage and facilitate an open exchange of ideas and open communication regarding training and technical assistance on the ACA and IHCIA provisions.

(2) Conduct training and technical assistance on the ACA and IHCIA and the changes and requirements that will affect AI/ANs either independently or jointly via a partnership as described previously. The purpose of this IHS cooperative agreement announcement is to encourage national and regional Indian organizations and IHS and Tribal (I/T) partners to work together to conduct ACA/IHCIA training and technical assistance throughout Indian Country. The project goals are three-fold for the IHS and the selected entities:

(i) Materials—Develop and disseminate (upon IHS approval) training materials about the ACA/IHCIA impact on the Indian health care system including: Educating consumers on the health care insurance options available, educating the I/T system on the process for enrollment (with a special focus on the Certified Application Counselor (CAC) and Hardship Exemption requirements) and eligibility determinations, and maximizing revenue opportunities.

(ii) Training—Develop and implement an ACA/IHCIA implementation training plan and individual training sessions aimed at educating all Indian health care system stakeholders on health care system impact and changes, specifically implementation in the different types of marketplaces, the role of Health Insurance Marketplace assisters (special emphasis on CAC), Navigators, and the Hardship Exemption for AI/ANs. Collaborate and partner with other national organizations to identify ways to take full advantage of the health care coverage options offered through the Health Insurance Marketplace.

(iii) Technical Assistance—Provide technical assistance to I/T on the ACA/IHCIA implementation. Work with these entities to assess the training needs, identify innovations in ACA/IHCIA implementation, including technology, and promote the dissemination and replication of solutions to the challenges faced by I/T in implementing the ACA/IHCIA through the identification and promotion of best practices.

Summary of Tasks To Be Performed

The project will conduct the following major activities:

1. Develop and implement a communications strategy for each FY as follows:

a. Applicant 1—$75,000 per FY totaling $225,000 for all three years.

i. Educate AI/ANs on the available health coverage options under the ACA;

ii. Focus on the needs of Direct Services Tribes, including: Providing policy review and analysis of health care issues, training Tribal leaders on the health insurance options available under the ACA and sharing outreach and education best practices among Direct Service Tribes.

iii. Develop a technical assistance plan and provide technical assistance to NIHOE Health Reform partners, Tribal leaders, Tribal employers and Direct Service Tribes on ACA/IHCIA implementation across the Indian health care system.

iv. Work with NIHOE Health Reform partners and Direct Service Tribes to achieve economies of scale and reduce duplication of AI/AN training and outreach and education materials, including the development of cross-cutting ACA/IHCIA content specific to the Indian health care system.

v. Work with NIHOE Health Reform partners and Direct Service Tribes to enhance collaboration with other Federal agency programs, local, state, Tribal and national partners.

b. Applicant 2—$125,000 per FY totaling $375,000 for all three years.

i. Educate Tribal leaders and Tribal employers on the health insurance options under the ACA including the Small Business Health Options Program and Tribal self-insurance; and

ii. Develop a technical assistance plan and provide technical assistance to NIHOE Health Reform partners, Tribal leaders, Tribal employers and Direct Service Tribes on ACA/IHCIA implementation across the Indian health care system.

The following key components need to be addressed in the work plan:

Develop a national coordination strategy for the Health Reform project to ensure a shared vision and mission amongst all partners and convene partners on a regular basis.

Applicants should describe plans for addressing the following:

Outreach and Education

- The awardee shall coordinate and develop a multiple strategy education and outreach training approach for I/T that reaches the widest audience possible in a timely fashion, appropriately tailored to the needs of AI/AN communities.
- The awardee shall conduct regional and national ACA/IHCIA education and outreach focusing on four consumer groups: (1) Consumers; (2) Tribal Leadership and Membership; (3) Tribal Employers; and (4) Indian Health Facility Administrators.
- The awardee shall provide measurable outcomes and performance improvement activities for ACA/IHCIA outreach and education actions.
- The awardee shall share information, innovative ideas, challenges and solutions, and provide progress reports.

Policy Analysis

- The awardee shall develop, monitor and review ACA review metrics that provide indicators of AI/AN participation in marketplace plans and I/T participation as network providers in the marketplace and disseminate ACA policy information at national conferences and through IHS advisory committees.
- The awardee shall review and coordinate ACA/IHCIA policy recommendations and strategies by the I/T.
- The awardee shall ensure the training curriculum content addresses all new regulations and operations for implementing the ACA/IHCIA requirements.

Information Sharing and Technical Assistance

- The awardee shall collaborate and coordinate to ensure training and educational materials are widely distributed to Tribal leaders and frontline enrollment personnel.
- The awardee shall conduct and record monthly meetings with NIHOE Health Reform national and regional principals to share information, share best practices, and provide progress reports.
- The awardee shall plan communication around key moments or events through the grant period to increase education efforts.
- The awardees shall identify I/T audiences that may have challenges with enrollments and tailor outreach efforts accordingly.
- The awardees shall develop communications vehicles to showcase positive impact stories of I/T with ACA/IHCIA.
- The awardee shall develop and provide templates for Tribal, IHS, and community outreach and education.
- The awardee shall conduct workshops and/or presentations including, but not limited to, the successes of the ACA/IHCIA promising practices and/or best practices of I/T programs at three national conferences (venue and content of presentations to

be agreed upon in advance by the awardee and the IHS assigned program official).

- The awardee will provide postings on ACA/IHCIA outreach and education related information for appropriate Web site dissemination.
- The awardee will develop and/or maintain a comprehensive list of ACA/IHCIA outreach and education program development and business practice guidelines for use by I/T programs.
- The awardee shall act as a resource broker and identify subject matter experts to conduct trainings and technical assistance for implementation of the ACA enrollments.
- The awardee shall provide quarterly articles for national and local media outlets and I/T news information sources, focusing on the successful impact and outcomes of ACA/IHCIA in Tribal communities, available resources, and funding opportunities.
- The awardee shall meet with stakeholders to identify their needs from a community level and monitor level of access to education and outreach materials (*i.e.,* pharmacy bags, palm cards, posters, payroll inserts, etc.).

Training

- The awardee shall re-evaluate all ACA/IHCIA training material available for AI/AN, present findings to IHS, and mutually decide on new materials.
- The awardee shall record training sessions and make the recordings available to the I/T and AI/AN community on the Web sites of the national Indian organizations and partners.
- The awardee shall provide focused ACA/IHCIA education that translates in everyday language explaining the benefits of the ACA and the special provisions for Indians. The awardee, because involvement of community based partners and local leadership from all I/T levels is an important factor in the success of any enrollment process, shall develop modified training briefs for Tribal health directors, chief executive officers, health care professionals, and Tribal leaders to assist with outreach efforts.
- The awardee shall provide ongoing AI/AN consumers training on tools developed for State Based Marketplace (SBM) implementation.

Reporting

- The awardee shall provide semi-annual reports documenting and describing progress and accomplishment of the activities specified above, attaching any necessary documentation to adequately document accomplishments.
- The awardee shall attend regularly scheduled, in-person and conference call meetings with the IHS assigned program official team to discuss the awardee's services and outreach and education related issues. The awardee must provide meeting minutes that highlight the awardee's specific involvement and participation.
- The awardee shall obtain approval from the IHS assigned program official for all PowerPoint presentations, electronic content, and other materials, including mass emails, developed by awardee pursuant to this award and any supplemental awards prior to the presentation or dissemination of such materials to any party, allowing for a reasonable amount of time for IHS review.
- The awardee shall conduct and record monthly meetings with NIHOE national and regional principals to share information and provide progress reports.
- The awardee shall assess and provide measurable outcomes and performance improvement activities for ACA/IHCIA outreach and education actions both quantitative and qualitative.

1. The awardee shall monitor and track I/T facility enrollment data and identify challenges and opportunities for outreach and education activities and report findings on a regular basis.
2. Identify successes and gaps in enrollment and develop future enrollment campaigns and report findings on a regular basis.

Requirements

- Attendance at regularly scheduled meetings between awardee and the IHS assigned program official, evidenced by meeting minutes which highlight the awardee's specific involvement and participation.
- Participation on outreach and education conference calls identified by the IHS assigned program official, evidenced by meeting agenda and minutes as needed.
- Report of outcomes at conferences (meeting booths, workshops and/or presentations provided):

1. National Advisory Committee conference calls and meetings.
2. IHS area conference calls.
3. IHS area and national webinars.
4. Other AI/AN national conferences.

- Completed programmatic reviews of semi and annual progress reports of outreach and education projects, in order to identify projects that require technical assistance. [Note: This review is not to replace IHS review of outreach and education programs. The programmatic reviews to be conducted by grantee are secondary reviews intended solely to identify programs in need of technical assistance.]
  - ○ The awardee shall help the IHS assigned program official identify challenges faced by participating I/T and assist in developing solutions.
- Copies of educational and practice-based information provided to I/T programs (electronic form and one hard copy).
- Copies of all promotional and educational materials provided to I/T programs and other projects (electronic form and one hard copy).
- Copies of all promotional materials provided to media and other outlets (electronic form and one hard copy).
- Copies of all articles published (electronic form and one hard copy).

Submit semi-annual and annual progress reports to ORAP and ODSCT, due no later than 30 days after the reporting cycle, attaching any necessary documentation. For example: Meeting minutes, correspondence with I/T programs, samples of all written materials developed including brochures, news articles, videos, and radio and television ads to adequately document accomplishments.

- The awardee will submit a deliverable schedule to the program official not later than 30 days after the start date.

The IHS will provide guidance and assistance as needed. Copies of all requirements must be submitted to the IHS ODSCT; IHS ORAP; and IHS Deputy Director.

A. Collaboration and Coordination To Ensure Training and Materials Are Widely Distributed

1. Evaluate all available ACA/IHCIA training material available for AI/AN and create additional materials as needed that are related to ACA/IHCIA.
2. Record, track, and coordinate information sharing activities (enrollments, trainings, information shared, meetings, updates, etc.) with IHS Offices: ODSCT, ORAP and 11 IHS area offices including Albuquerque Area, Bemidji Area, Billings Area, California Area, Great Plains Area, Nashville Area, Navajo Area, Oklahoma City Area, Phoenix Area, Portland Area and Tucson Area.
3. Record training sessions and describe how they will be made available on the Web sites of the national Indian organizations and partners.
4. Describe how to ensure the training curriculum content addresses all new regulations implementing the ACA and IHCIA requirements.

5. Participate in monthly meetings with NIHOE Health Reform national and regional principals to share information and provide progress reports.

6. Provide ongoing training on tools developed for SBM implementation.

7. Because involvement of community based partners and local leadership from all I/T levels is an important factor in the success of any enrollment process, develop modified training briefs for other community leaders to assist with outreach efforts.

B. Work Plan

1. Provide a Work Plan that describes the sequence of specific activities and steps that will be used to carry out each of the objectives, including updates about progress implementing the ACA.

2. Report the number of CAC staff trained and employed, network contracts, additional consumers enrolled in Medicaid, Children's Health Insurance Program (CHIP) or marketplace plan, and in-network contracts with a Qualified Health Plans (QHP) in the Marketplace using the Model QHP Addendum for Indian Health Care Providers. Describe outreach and enrollment activities, partnerships, and planning.

3. Include a detailed time line that links activities to project objectives for every 12-month budget period for the three years of funding.

4. Identify challenges, both opportunities and barriers that are likely to be encountered in designing and implementing the activities and approaches that will be used to address such challenges.

5. Describe communication methods with partners including plans for improving communication.

C. Evaluation

1. Provide a plan for assessing the achievement of the project's objectives and for evaluating changes in the specific problems and contributing factors.

2. Identify performance measures by which the project will track its progress over time.

3. Secure agreement with IHS on evaluation methods and deadlines.

D. Budget

Provide a functional categorically itemized budget and program narrative justification that supports accomplishing the program objectives, activities, and outcomes within the timeframes specified.

III. Eligibility Information

I.

1. Eligibility

To be eligible for this "New Limited competition Announcement", an applicant must be a 501(c)(3) non-profit entity who meets the following criteria:

Eligible applicants that can apply for this funding opportunity are national Indian organizations.

The national Indian organizations must have the infrastructure in place to accomplish the work under the proposed program.

Eligible entities must have demonstrated expertise in the following areas:

- Representing all Tribal governments and providing a variety of services to Tribes, area health boards, Tribal organizations, and Federal agencies, and playing a major role in focusing attention on Indian health care needs, resulting in improved health outcomes for AI/ANs.
- Promoting and supporting Indian health care education and coordinating efforts to inform AI/AN of Federal decisions that affect Tribal government interests including the improvement of Indian health care.
- Administering national health policy and health programs.
- Maintaining a national AI/AN constituency and clearly supporting critical services and activities within the IHS mission of improving the quality of health care for AI/AN people.
- Supporting improved health care in Indian Country.
- Providing education and outreach on a national scale (the applicant must provide evidence of at least ten years of experience in this area).

Note: Please refer to Section IV.2 (Application and Submission Information/Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required such as proof of non-profit status, etc.

2. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

3. Other Requirements

If application budgets exceed the highest dollar amount outlined under the "Estimated Funds Available" section within this funding announcement, the application will be considered ineligible and will not be reviewed for further consideration. If deemed ineligible, IHS will not return the application. The applicant will be notified by email by the Division of Grants Management (DGM) of this decision.

The following documentation is required:

Proof of Non-Profit Status

Organizations claiming non-profit status must submit proof. A copy of the 501(c)(3) Certificate must be received with the application submission by the Application Deadline Date listed under the Key Dates section on page one of this announcement.

An applicant submitting any of the above additional documentation after the initial application submission due date is required to ensure the information was received by the IHS by obtaining documentation confirming delivery (*i.e.*, FedEx tracking, postal return receipt, etc.).

IV. Application and Submission Information

1. Obtaining Application Materials

The application package and detailed instructions for this announcement can be found at *http://www.Grants.gov* or *http://www.ihs.gov/dgm/funding/*.

Questions regarding the electronic application process may be directed to Mr. Paul Gettys at (301) 443–2114 or (301) 443–5204.

2. Content and Form Application Submission

The applicant must include the project narrative as an attachment to the application package. Mandatory documents for all applicants include:

- Table of contents.
- Abstract (one page) summarizing the project.
- Application forms:
  - ○ SF–424, Application for Federal Assistance.
  - ○ SF–424A, Budget Information—Non-Construction Programs.
  - ○ SF–424B, Assurances—Non-Construction Programs.
- Budget Justification and Narrative (must be single spaced and not exceed five pages).
- Project Narrative (must be single spaced and not exceed ten pages for each of the two components).
  - ○ Background information on the organization.
  - ○ Proposed scope of work, objectives, and activities that provide a description of what will be accomplished, including a one-page Timeframe Chart.
- Tribal letters of support (Optional).
- Letter of support from organization's board of directors.
- 501(c)(3) Certificate (if applicable).
- Position descriptions of key personnel.
- Resumes of key personnel.
- Contractor/Consultant resumes or qualifications and scope of work.

- Disclosure of Lobbying Activities (SF–LLL).
- Certification Regarding Lobbying (GG-Lobbying Form).
- Copy of current Negotiated Indirect Cost rate (IDC) agreement (required) in order to receive IDC.
- Organizational Chart (optional).
- Documentation of current OMB A–133 required Financial Audit (if applicable).

Acceptable forms of documentation include:

  - ○ Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
  - ○ Face sheets from audit reports. These can be found on the FAC Web site: *http://harvester.census.gov/sac/dissem/accessoptions.html?submit=Go+To+Database.*

Public Policy Requirements

All Federal-wide public policies apply to IHS grants and cooperative agreements with exception of the discrimination policy.

Requirements for Project and Budget Narratives

A. Project Narrative: This narrative should be a separate Word document that is no longer than ten pages for each of the two components for a total of 20 pages: $600,000 to conduct ACA/IHCIA education and outreach training and technical assistance for three consecutive years. Project narrative must: Be single-spaced, be type written, have consecutively numbered pages, use black type not smaller than 12 characters per one inch, and be printed on one side only of standard size 8½″ x 11″ paper.

Be sure to succinctly address and answer all questions listed under the narrative and place them under the evaluation criteria (refer to Section V.1, Evaluation criteria in this announcement) and place all responses and required information in the correct section (noted below), or they shall not be considered or scored. These narratives will assist the Objective Review Committee (ORC) in becoming familiar with the applicant's activities and accomplishments prior to this cooperative agreement award. If the narrative exceeds the page limit, only the first ten pages of each component will be reviewed. The ten-page limit for the narrative does not include the work plan, standard forms, table of contents, budget, budget justifications, narratives, and/or other appendix items.

There are three parts to the narrative: Part A—Program Information; Part B—Program Planning and Evaluation; and Part C—Program Report. See below for additional details about what must be included in the narrative.

Part A: Program Information (4 Page Limitation for Each Component)

Section 1: Needs

Describe how the national Indian organization(s) has the experience to provide outreach and education efforts regarding the pertinent changes and updates in health care listed herein.

Part B: Program Planning and Evaluation (4 Page Limitation for Each Component)

Section 1: Program Plans

Describe fully and clearly the direction the national Indian organization plans to address the NIHOE III Health Reform requirements, including how the national Indian organization plans to demonstrate improved health education and outreach services to all 567 Federally-recognized Tribes. Include proposed timelines as appropriate and applicable.

Section 2: Program Evaluation

Describe fully and clearly how the outreach and education efforts will impact changes in knowledge and awareness in Tribes and Tribal organizations to encourage appropriate changes by increasing knowledge and awareness resulting in informed choices. Identify anticipated or expected benefits for the Tribal constituency.

Part C: Program Report (2 Page Limitation for Each Component)

Section 1: Describe major accomplishments over the last 36 months.

Identify and describe significant program achievements associated with the delivery of quality health outreach and education. Provide a comparison of the actual accomplishments to the goals established for the project period, or if applicable, provide justification for the lack of progress.

Section 2: Describe major activities over the last 36 months.

Please provide an overview of significant program activities and impacts (meaningful changes made), associated with the delivery of quality health outreach and education. This section should address significant program activities and impacts including those related to the accomplishments listed in the previous section.

B. Budget Narrative: This narrative must include a line item budget with a narrative justification for all expenditures identifying reasonable and allowable costs necessary to accomplish the goals and objectives as outlined in the project narrative. Budget should match the scope of work described in the project narrative. The budget narrative should not exceed five pages.

3. Submission Dates and Times

Applications must be submitted electronically through Grants.gov by 11:59 p.m. Eastern Daylight Time (EDT) on the Application Deadline Date listed in the Key Dates section on page one of this announcement. Any application received after the application deadline will not be accepted for processing, nor will it be given further consideration for funding. Grants.gov will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the electronic application process, contact *Grants.gov* Customer Support via email to *support@grants.gov* or at (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays). If problems persist, contact Mr. Paul Gettys (*Paul.Gettys@ihs.gov*), DGM Grant Systems Coordinator, by telephone at (301) 443–2114 or (301) 443–5204. Please be sure to contact Mr. Gettys at least ten days prior to the application deadline. Please do not contact the DGM until you have received a *Grants.gov* tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

If the applicant needs to submit a paper application instead of submitting electronically through Grants.gov, a waiver must be requested. Prior approval must be requested and obtained from Mr. Robert Tarwater, Director, DGM, (see Section IV.6 below for additional information). The waiver must: (1) Be documented in writing (emails are acceptable), *before* submitting a paper application, and (2) include clear justification for the need to deviate from the required electronic grants submission process. A written waiver request must be sent to *GrantsPolicy@ihs.gov* with a copy to *Robert.Tarwater@ihs.gov.* Once the waiver request has been approved, the applicant will receive a confirmation of approval email containing submission instructions and the mailing address to submit the application. A copy of the written approval *must* be submitted along with the hardcopy of the application that is mailed to DGM. Paper applications that are submitted without a copy of the signed waiver from the Director of the DGM will not be reviewed or considered for funding. The applicant will be notified via email of this decision by the Grants Management Officer of the DGM. Paper applications must be received by the DGM no later than 5:00 p.m., EDT, on the Application Deadline Date listed in the Key Dates section on page one of this announcement. Late applications will not be accepted for processing or considered for funding.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are not allowable.
- The available funds are inclusive of direct and appropriate indirect costs.
- Only one grant/cooperative agreement will be awarded per applicant.
- IHS will not acknowledge receipt of applications.

6. Electronic Submission Requirements

All applications must be submitted electronically. Please use the *http://www.Grants.gov* Web site to submit an application electronically and select the "Find Grant Opportunities" link on the homepage. Download a copy of the application package, complete it offline, and then upload and submit the completed application via the *http://www.Grants.gov* Web site. Electronic copies of the application may not be submitted as attachments to email messages addressed to IHS employees or offices.

If the applicant receives a waiver to submit paper application documents, they must follow the rules and timelines that are noted below. The applicant must seek assistance at least ten days prior to the Application Deadline Date listed in the Key Dates section on page one of this announcement.

Applicants that do not adhere to the timelines for System for Award Management (SAM) and/or *http://www.Grants.gov* registration or that fail to request timely assistance with technical issues will not be considered for a waiver to submit a paper application.

Please be aware of the following:

- Please search for the application package in *http://www.Grants.gov* by entering the CFDA number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting your application electronically, please contact *Grants.gov* Support directly at: *support@grants.gov* or (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays).
- Upon contacting *Grants.gov,* obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.
- If it is determined that a waiver is needed, the applicant must submit a request in writing (emails are acceptable) to *GrantsPolicy@ihs.gov* with a copy to *Robert.Tarwater@ihs.gov.* Please include a clear justification for the need to deviate from the standard electronic submission process.
- If the waiver is approved, the application should be sent directly to the DGM by the Application Deadline Date listed in the Key Dates section on page one of this announcement.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through *Grants.gov* as the registration process for SAM and *Grants.gov* could take up to fifteen working days.
- Please use the optional attachment feature in *Grants.gov* to attach additional documentation that may be requested by the DGM.
- All applicants must comply with any page limitation requirements described in this funding announcement.
- After electronically submitting the application, the applicant will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number. The DGM will download the application from *Grants.gov* and provide necessary copies to the appropriate agency officials. Neither the DGM nor the ODSCT will notify the applicant that the application has been received.
- Email applications will not be accepted under this announcement.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

All IHS applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the SAM database. The DUNS number is a unique 9-digit identification number provided by D&B which uniquely identifies each entity. The DUNS number is site specific; therefore, each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, please access it through *http://fedgov.dnb.com/webform,* or to expedite the process, call (866) 705–5711.

All HHS recipients are required by the Federal Funding Accountability and Transparency Act of 2006, as amended ("Transparency Act"), to report information on sub-awards. Accordingly, all IHS grantees must notify potential first-tier sub-recipients that no entity may receive a first-tier sub-award unless the entity has provided its DUNS number to the prime grantee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

System for Award Management (SAM)

Organizations that were not registered with Central Contractor Registration and have not registered with SAM will need to obtain a DUNS number first and then access the SAM online registration through the SAM home page at *https://www.sam.gov* (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active). Completing and submitting the registration takes approximately one hour to complete and SAM registration will take 3–5 business days to process. Registration with the SAM is free of charge. Applicants may register online at *https://www.sam.gov.*

Additional information on implementing the Transparency Act, including the specific requirements for DUNS and SAM, can be found on the IHS Grants Management, Grants Policy Web site: *http://www.ihs.gov/dgm/policytopics/.*

V. Application Review Information

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses. The ten page narrative for each component should include only the first year of activities; information for multi-year projects should be included as an appendix. See "Multi-year Project Requirements" at the end of this section for more information. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. Points will be assigned to each evaluation criteria adding up to a total of 100 points. A minimum score of 60 points is required for funding. Points are assigned as follows:

1. Criteria

A. Introduction and Need for Assistance (15 Points)

(1) Describe the individual entity's and/or partnering entities' (as applicable) current health, education and technical assistance operations as related to the broad spectrum of health needs of the AI/AN community. Include what programs and services are currently provided (*i.e.,* Federally funded, State funded, etc.), any memorandums of agreement with other national, area or local Indian health board organizations, HHS agencies that rely on the applicant as the primary gateway organization that is capable of providing the dissemination of health information, information regarding technologies currently used (*i.e.,* hardware, software, services, etc.), and identify the source(s) of technical support for those technologies (*i.e.,* in-house staff, contractors, vendors, etc.). Include information regarding how long the applicant has been operating and its length of association/partnerships with area health boards, etc. [historical collaboration].

(2) Describe the organization's current technical assistance ability. Include what programs and services are currently provided, programs and services projected to be provided, etc.

(3) Describe the population to be served by the proposed project. Include a description of the number of Tribes and Tribal members who currently benefit from the technical assistance provided by the applicant.

(4) State how previous cooperative agreement funds facilitated education, training and technical assistance nation-wide for AI/ANs and relate the progression of health care information delivery and development relative to the current proposed project. (Copies of reports will not be accepted.)

(5) Describe collaborative and supportive efforts with national, area and local Indian health boards.

(6) Describe how the project relates to the purpose of the cooperative agreement by addressing the following: Identify how the proposed project will address the changes and requirements of the Acts.

B. Project Objective(s), Work Plan and Approach (45 Points)

(1) Proposed project objectives must be:

a. Measurable and (if applicable) quantifiable.

b. Results oriented.

c. Time-limited.

(2) Submit a work plan in the appendix which includes the following information:

a. Provide the action steps on a timeline for accomplishing the proposed project objective(s).

b. Identify who will perform the action steps.

c. Identify who will supervise the action steps taken.

d. Identify what tangible products will be produced during and at the end of the proposed project objective(s).

e. Identify who will accept and/or approve work products during the duration of the proposed project and at the end of the proposed project.

f. Include any training that will take place during the proposed project and who will be attending the training.

g. Include evaluation activities planned.

(3) If consultants or contractors will be used during the proposed project, please include the following information in their scope of work (or note if consultants/contractors will not be used):

a. Educational requirements.

b. Desired qualifications and work experience.

c. Expected work products to be delivered on a timeline.

d. If a potential consultant/contractor has already been identified, please include a resume in the Appendix.

C. Program Evaluation (15 Points)

Each proposed objective requires an evaluation component to assess its progression and ensure its completion. Also, include the evaluation activities in the work plan. Describe the proposed plan to evaluate both outcomes and process. Outcome evaluation relates to the results identified in the objectives, and process evaluation relates to the work plan and activities of the project.

(1) For outcome evaluation, describe:

a. What the criteria will be for determining success of each objective.

b. What data will be collected to determine whether the objective was met.

c. At what intervals will data be collected.

d. Who will collect the data and their qualifications.

e. How the data will be analyzed.

f. How the results will be used.

(2) For process evaluation, describe:

a. How the project will be monitored and assessed for potential problems and needed quality improvements.

b. Who will be responsible for monitoring and managing project improvements based on results of ongoing process improvements and their qualifications.

c. How ongoing monitoring will be used to improve the project.

d. Any products, such as manuals or policies, that might be developed and how they might lend themselves to replication by others.

(3) Describe how the project will document what is learned throughout the project period. Describe any evaluation efforts that are planned to occur after the grant periods ends.

(4) Describe the ultimate benefit for the AI/ANs that will be derived from this project.

D. Organizational Capabilities, Key Personnel and Qualifications (15 Points)

(1) Describe the organizational structure of the organization.

(2) Describe the ability of the organization to manage the proposed project. Include information regarding similarly sized projects in scope and financial assistance as well as other cooperative agreements/grants and projects successfully completed.

(3) Describe what equipment (*i.e.,* fax machine, phone, computer, etc.) and facility space (*i.e.,* office space) will be available for use during the proposed project.

(4) List key personnel who will work on the project. Include title used in the work plan. In the appendix, include position descriptions and resumes for all key personnel. Position descriptions should clearly describe each position and duties, indicating desired qualifications and experience requirements related to the proposed project. Resumes must indicate that the proposed staff member is qualified to carry out the proposed project activities. If a position is to be filled, indicate that information on the proposed position description.

E. Categorical Budget and Budget Justification (10 Points)

(1) Provide a categorical budget for 12-month budget period requested.

(2) If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a copy of the rate agreement in the appendix.

(3) Provide a narrative justification explaining why each line item is necessary/relevant to the proposed project. Include sufficient cost and other details to facilitate the determination of cost allowability (*i.e.,* equipment specifications, etc.).

Multi-Year Project Requirements

Projects requiring a second and/or third year must include a brief project narrative and budget (one additional page per year) addressing the developmental plans for each additional year of the project.

Additional documents can be uploaded as Appendix Items in *Grants.gov*

- Work plan, logic model and/or time line for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Current Indirect Cost Agreement.
- Organizational chart.
- Map of area identifying project location(s).
- Additional documents to support narrative (*i.e.,* data tables, key news articles, etc.).

2. Review and Selection

Each application will be prescreened by the DGM staff for eligibility and completeness as outlined in the funding announcement. Applications that meet the eligibility criteria shall be reviewed for merit by the ORC based on evaluation criteria in this funding announcement. The ORC could be composed of both Tribal and Federal reviewers appointed by the IHS program to review and make recommendations on these applications. The technical review process ensures selection of quality projects in a national competition for limited funding. Incomplete applications and applications that are non-responsive to the eligibility criteria will not be referred to the ORC. The applicant will be notified via email of this decision by the Grants Management Officer of the DGM. Applicants will be notified by DGM, via email, to outline minor missing components (*i.e.,* budget narratives, audit documentation, key contact form) needed for an otherwise complete application. All missing documents must be sent to DGM on or before the due date listed in the email of notification of missing documents required.

To obtain a minimum score for funding by the ORC, applicants must address all program requirements and provide all required documentation.

VI. Award Administration Information

1. Award Notices

The Notice of Award (NoA) is a legally binding document signed by the grants management officer and serves as the official notification of the grant award. The NoA will be initiated by the DGM in our grant system, GrantSolutions (*https://www.grantsolutions.gov*). Each entity that is approved for funding under this announcement will need to request or have a user account in GrantSolutions in order to retrieve their NoA. The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period.

Disapproved Applicants

Applicants who received a score less than the recommended funding level for approval, 60 points or more, and were deemed to be disapproved by the ORC, will receive an Executive Summary Statement from the ODSCT within 30 days of the conclusion of the ORC outlining the strengths and weaknesses of their application submitted. The ODSCT will also provide additional contact information as needed to address questions and concerns as well as provide technical assistance if desired.

Approved But Unfunded Applicants

Approved but unfunded applicants that met the minimum scoring range and were deemed by the ORC to be "Approved," but were not funded due to lack of funding, will have their applications held by DGM for a period of one year. If additional funding becomes available during the course of FY 2016, the approved but unfunded application may be re-considered by the awarding program office for possible funding. The applicant will also receive an Executive Summary Statement from the IHS program office within 30 days of the conclusion of the ORC.

Note: Any correspondence other than the official NoA signed by an IHS grants management official announcing to the project director that an award has been made to their organization is not an authorization to implement their program on behalf of IHS.

2. Administrative Requirements

Cooperative agreements are administered in accordance with the following regulations, policies, and OMB cost principles:

A. The criteria as outlined in this program announcement.

B. Administrative Regulations for Grants:

- Uniform Administrative Requirements for HHS Awards located at 45 CFR part 75.

C. Grants Policy:

- HHS Grants Policy Statement, Revised 01/07.

D. Cost Principles:

- Uniform Administrative Requirements for HHS Awards, "Cost Principles," located at 45 CFR part 75, subpart E.

E. Audit Requirements:

- Uniform Administrative Requirements for HHS Awards, "Audit Requirements," located at 45 CFR part 75, subpart F.

3. Indirect Costs (IDC)

This section applies to all grant recipients that request reimbursement of indirect costs (IDC) in their grant application. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to obtain a current IDC rate agreement prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate is provided to the DGM.

Generally, IDC rates for IHS grantees are negotiated with the Division of Cost Allocation (DCA) *https://rates.psc.gov/* and the Department of Interior (Interior Business Center) *https://www.doi.gov/ibc/services/finance/indirect-Cost-Services/indian-tribes*. For questions regarding the indirect cost policy, please call the Grants Management Specialist listed under "Agency Contacts" or the main DGM office at (301) 443–5204.

4. Reporting Requirements

The grantee must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports. Per DGM policy, all reports are required to be submitted electronically by attaching them as a "Grant Note" in GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please see the Agency Contacts list in section VII for the systems contact information.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required semi-annually within 30 days after the budget period ends. These reports must include a brief comparison of actual accomplishments to the goals established for the period, or, if applicable, provide sound justification for the lack of progress and other pertinent information as required. A final report must be submitted within 90 days of expiration of the budget/project period.

B. Financial Reports

Federal Financial Report FFR (SF–425), Cash Transaction Reports are due 30 days after the close of every calendar quarter to the Payment Management Services, HHS at: *http://www.dpm.psc.gov*. It is recommended that the applicant also send a copy of the FFR (SF–425) report to the Grants Management Specialist. Failure to submit timely reports may cause a disruption in timely payments to the organization.

Grantees are responsible and accountable for accurate information being reported on all required reports: the Progress Reports and Federal Financial Report.

C. Federal Sub-Award Reporting System (FSRS)

This award may be subject to the Transparency Act sub-award and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier sub-awards and executive compensation under Federal assistance awards.

IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 sub-award obligation dollar threshold met for any specific reporting period. Additionally, all new (discretionary) IHS awards (where the project period is made up of more than one budget period) and where: (1) The project period start date was October 1, 2010 or after and (2) the primary awardee will have a $25,000 sub-award obligation dollar threshold during any specific reporting period will be required to address the FSRS reporting. For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Policy Web site at: *http://www.ihs.gov/dgm/policytopics/*.

D. Compliance With Executive Order 13166 Implementation of Services Accessibility Provisions for All Grant Application Packages and Funding Opportunity Announcements

Recipients of federal financial assistance (FFA) from HHS must administer their programs in compliance with federal civil rights law. This means that recipients of HHS funds must ensure equal access to their programs without regard to a person's race, color, national origin, disability, age and, in some circumstances, sex and religion. This includes ensuring your programs are accessible to persons with limited English proficiency. HHS provides guidance to recipients of FFA on meeting their legal obligation to take reasonable steps to provide meaningful access to their programs by persons with limited English proficiency. Please see *http://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/guidance-federal-financial-assistance-recipients-title-VI/*.

The HHS Office for Civil Rights (OCR) also provides guidance on complying with civil rights laws enforced by HHS. Please see *http://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html;* and *http://www.hhs.gov/civil-rights/index.html*. Recipients of FFA also have specific legal obligations for serving qualified individuals with disabilities. Please see *http://www.hhs.gov/civil-rights/for-individuals/disability/index.html*. Please contact the HHS OCR for more information about obligations and prohibitions under federal civil rights laws at *http://www.hhs.gov/civil-rights/for-individuals/disability/index.html* or call 1–800–368–1019 or TDD 1–800–537–7697. Also note it is an HHS Departmental goal to ensure access to quality, culturally competent care, including long-term services and supports, for vulnerable populations. For further guidance on providing culturally and linguistically appropriate services, recipients should review the National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care at *http://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=53*.

Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of his/her exclusion from benefits limited by federal law to individuals eligible for benefits and services from the Indian Health Service.

Recipients will be required to sign the HHS–690 Assurance of Compliance form which can be obtained from the following Web site: *http://www.hhs.gov/sites/default/files/forms/hhs-690.pdf*, and send it directly to the: U.S. Department of Health and Human Services, Office of Civil Rights, 200 Independence Ave. SW., Washington, DC 20201.

E. Federal Awardee Performance and Integrity Information System (FAPIIS)

The IHS is required to review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information System (FAPIIS) before making any award in excess of the simplified acquisition threshold (currently $150,000) over the period of performance. An applicant may review and comment on any information about itself that a federal awarding agency previously entered. IHS will consider any comments by the applicant, in addition to other information in FAPIIS in making a judgment about the applicant's integrity, business ethics, and record of performance under federal awards when completing the review of risk posed by applicants as described in 45 CFR 75.205.

As required by 45 CFR part 75 Appendix XII of the Uniform Guidance, non-federal entities (NFEs) are required to disclose in FAPIIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive federal awards (currently active grants, cooperative agreements, and procurement contracts) greater than $10,000,000 for any period of time during the period of performance of an award/project.

Mandatory Disclosure Requirements

As required by 2 CFR part 200 of the Uniform Guidance, and the HHS implementing regulations at 45 CFR part 75, effective January 1, 2016, the IHS must require a non-federal entity or an applicant for a federal award to disclose, in a timely manner, in writing to the IHS or pass-through entity all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award.

Submission is required for all applicants and recipients, in writing, to the IHS and to the HHS Office of Inspector General all information related to violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. 45 CFR 75.113.

Disclosures must be sent in writing to: U.S. Department of Health and Human Services, Indian Health Service, Division of Grants Management, ATTN: Robert Tarwater, Director, 5600 Fishers Lane, Mailstop: 09E70, Rockville, Maryland 20852. (Include "Mandatory Grant Disclosures" in subject line). Ofc: (301) 443–5204. Fax: (301) 594–0899. Email: *Robert.Tarwater@ihs.gov*.

AND

U.S. Department of Health and Human Services, Office of Inspector General, ATTN: Mandatory Grant Disclosures, Intake Coordinator, 330 Independence Avenue SW., Cohen Building, Room 5527, Washington, DC 20201, URL: *http://oig.hhs.gov/fraud/reportfraud/index.asp*. (Include "Mandatory Grant Disclosures" in subject line). Fax: (202) 205–0604 (Include "Mandatory Grant Disclosures" in subject line) or Email: *MandatoryGranteeDisclosures@oig.hhs.gov*.

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (See 2 CFR parts 180 & 376 and 31 U.S.C. 3321).

VII. Agency Contacts

1. Questions on the programmatic issues may be directed to: Ms. Michelle EagleHawk, Deputy Director, ODSCT, 5600 Fishers Lane, Mail Stop: O8E17, Rockville, Maryland 20857, Telephone: (301) 443–1104, E-Mail: *Michelle.EagleHawk@ihs.gov*.

2. Questions on grants management and fiscal matters may be directed to: Ms. Patience Musikikongo, Grants Management Specialist, DGM, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Telephone: (301) 443–2059, Fax: (301) 594–0899, E-Mail: *Patience.Musikikongo@ihs.gov*.

3. Questions on systems matters may be directed to: Mr. Paul Gettys, Grant Systems Coordinator, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443–2114; or the DGM main line (301) 443–5204, Fax: (301) 594–0899, E-Mail: *Paul.Gettys@ihs.gov*.

VIII. Other Information

The Public Health Service strongly encourages all cooperative agreement and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Dated: July 18, 2016.

Elizabeth A. Fowler,

Deputy Director for Management Operations, Indian Health Service.

[FR Doc. 2016–17500 Filed 7–22–16; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 60 Day Proposed Information Collection: Environmental Health Assessment of Tribal Child Care Centers in the Pacific Northwest

AGENCY: Indian Health Service, HHS.

ACTION: Notice

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 which requires 60 days advance opportunity for public comment on proposed information collection projects, the Indian Health Service (IHS) is publishing for comment a summary of proposed information collection to be submitted to the Office of Management and Budget (OMB) for review.

Proposed Collection: Proposed Collection: Title: 0917–NEW, "Indian Health Service Environmental Health Assessment of Tribal Child Care Centers in the Pacific Northwest." *Type of Information Collection Request:* Three year approval of this new information collection, 0917–NEW, "Indian Health Service Environmental Health Assessment of Tribal Child Care Centers in the Pacific Northwest."

Form(s): Child Care Center Director Questionnaire and Pesticide Applicator Questionnaire.

DATES: *Comment Due Date:* September 23, 2016. Your comments regarding this information collection are best assured of having full effect if received within 60 days of the date of this publication.

ADDRESSES: Send your written comments, requests for more information on the collection, or requests to obtain a copy of the data collection instrument and instructions to Ms. Celeste Davis by one of the following methods:

- *Mail:* Ms. Celeste Davis, Director, Division of Environmental Health Services/Emergency Management Coordinator, U.S. DHHS/Indian Health Service, 1414 NW Northrup St., 800, Portland, OR 97209.
- *Phone:* 503–414–7774.
- *Email: Celeste.Davis@ihs.gov.*
- *Fax:* 503–414–7776.

SUPPLEMENTARY INFORMATION: The Division is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995. This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility: (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques of other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title of Proposal: Environmental Health Assessment of Tribal Child Care Centers in the Pacific Northwest.

OMB Control Number: To be assigned.

Need for the Information and Proposed Use: The Portland Area IHS and EPA seek to conduct an environmental health assessment of tribal child care centers in Portland Area Indian Country (in the states of Washington, Oregon, and Idaho). There is a significant data gap regarding the levels of lead, allergens, pesticides, and polychlorinated biphenyls (PCBs) in child care centers within Portland Area Indian country. This research will help us understand the potential for exposure to these chemicals among children who attend. For example, *Eliminating Childhood Lead Poisoning: A Federal Strategy Targeting Lead Paint Hazards,* produced by the President's Task Force on Environmental Health Risks and Safety Risks to Children discusses the need for more data on lead levels in licensed child care facilities. Also, data is limited on the interrelationships between exposure factors, building factors, and community factors and their combined impact on children's exposures from chemical agents in child care environments. Non-chemical stressors, such as noise, number of windows in the child care center, tree cover, and shade cover in play area, will be included in data collection. Community factors, such as mapping the locations of the child care facilities, roads, and agricultural operations, will be included in data collection in order to evaluate the relationship between indoor air quality and the outdoor environment.

IHS and EPA will also incorporate follow-up outreach and education with facilities to explain results and suggest corrective actions to remediate or reduce exposures from lead, allergens, pesticides, and PCBs that are detected in the facilities. The principal purpose of this project is to provide valuable data about the levels of lead, allergens, pesticides, and PCBs in child care facilities located in Portland Area Indian Country. This project will help prioritize services and funding based on known needs and risks in order to help facilities obtain needed services. This data may help tribes secure funding from the federal Head Start program and other funding sources for repairs, rehabilitations or other corrective action. This study may also provide federal Head Start and Tribal Programs with data to improve standards and initiate policy changes, if necessary. IHS will also provide indoor air quality kits to the facilities and environmental health training to center staff to provide methods and practices for preventing and controlling indoor environmental hazards. This project may be replicated in other IHS areas.

Agency Form Numbers: None.

Members of Affected Public: Operators of tribal child care facilities and pesticide applicators who work in child care facilities.

Status of the Proposed Information Collection: New request.

The table below provides: Types of data collection instruments, Estimated number of respondents, Number of responses per respondent, Annual number of responses, Average burden hour per response, and Total annual burden hours.

Data collection instrument	Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (hours)	Estimated burden hours
Child Care Center Director Questionnaire	Child Care Center Director	45	1	1.5	67.5
Pesticide Applicator Questionnaire	Pesticide Applicator	30	1	0.5	15
Total		75			82.5

There are no direct costs to respondents other than their time to voluntarily complete the forms and submit them for consideration.

Comment Due Date: Comments regarding this information collection are best assured of having full effect if received within 60 days of the date of this publication.

Dated: July 13, 2016.

Elizabeth A. Fowler,

Deputy Director for Management Operations, Indian Health Service.

[FR Doc. 2016–17494 Filed 7–22–16; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Eunice Kennedy Shriver, National Institute of Child Health and Human Development Special Emphasis Panel; Genetic Quality Control in the Mammalian Germline.

Date: September 6, 2016.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6710B Rockledge Drive, Room 2137C, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dennis E. Leszczynski, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6710B Rockledge Drive, Room 2137C, Bethesda, MD 20892, (301) 435–6884, leszczyd@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 19, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–17422 Filed 7–22–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD); Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Child Health and Human Development Council.

Date: August 22, 2016.

Time: 2:00 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6710B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Della Hann, Ph.D., Director, Division of Extramural Research, Eunice Kennedy Shriver National Institute of

Child Health and Human Development, NIH, 6710B Rockledge Drive, Room 2314, Bethesda, MD 20892, (301) 496–8535, *dhann@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 19, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–17423 Filed 7–22–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing and/or co-development in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing and/or co-development.

ADDRESSES: Invention Development and Marketing Unit, Technology Transfer Center, National Cancer Institute, 9609 Medical Center Drive, Mail Stop 9702, Rockville, MD, 20850–9702.

FOR FURTHER INFORMATION CONTACT: Information on licensing and co-development research collaborations, and copies of the U.S. patent applications listed below may be obtained by contacting: Attn. Invention Development and Marketing Unit, Technology Transfer Center, National Cancer Institute, 9609 Medical Center Drive, Mail Stop 9702, Rockville, MD 20850–9702, Tel. 240–276–5515 or email *ncitechtransfer@mail.nih.gov.* A signed Confidential Disclosure Agreement may be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: Technology description follows.

Title of invention: Novel metastatic serous epithelial ovarian cancer (SEOC) genetically engineered mouse models, cell lines, and orthotopic models based on Rb, p53 and/or Brca 1/2 inactivation useful for biomarker discovery and preclinical testing.

Description of Technology: The high mortality rate from ovarian cancers can be attributed to late-stage diagnosis and lack of effective treatment. Despite enormous effort to develop better targeted therapies, platinum-based chemotherapy still remains the standard of care for ovarian cancer patients, and resistance occurs at a high rate. One of the rate limiting factors for translation of new drug discoveries into clinical treatments has been the lack of suitable preclinical cancer models with high predictive value.

NCI CAPR has developed Tri-allelic K18–T121$^{tg/+}$ /Brca1$^{fl/fl}$ /p53$^{fl/fl}$ SEOC GEM Model, GEM-derived SEOC orthotopic mouse model, and biological materials derived therefrom, with several key histopathologic, immunophenotypical, and genetic features of human SEOC. SEOC GEMs were utilized to create orthotopic immunocompetent transplant models, and to generate synchronized cohorts of mice suitable for preclinical studies. NCI CAPR conducted studies that determine these models are tractable for use in routine efficacy studies and demonstrate the utility of these models in evaluating the potential efficacy of novel therapeutics for ovarian cancer.

Potential Commercial Applications:

- These models serve as a foundation for preclinical research and evaluation of efficacy of novel therapeutics for ovarian cancer.
- The GEM models described here can be used to develop cell lines and allograft models for evaluating drug potency relative to Brca1 mutation status.
- These mouse models provide the opportunity for evaluation of effective therapeutics, including prediction of differential responses in Brca1-wild type and Brca1–deficient tumors and development of relevant biomarkers.

Value Proposition:

- Novel resource for evaluating disease etiology and biomarkers, therapeutic evaluation, and improved imaging strategies in epithelial ovarian cancer
- Similarity to human ovarian cancer based on transcriptional profiling
- Suitable preclinical cancer models with high predictive value.

Development Stage: Pre-clinical (in vivo validation).

Inventor(s): Simone Difilippantonio, Terry Van Dyke, Zoe Weaver Ohler, Ludmila Szabova, Sujata Bupp, Yurong Song, Chaoying Yin.

Intellectual Property: Research use—no patent protection will be sought.

Publications:

1. Szabova L., Yin C., Bupp S., *et al.* Perturbation of Rb, p53 and Brca1 or Brca2 cooperate in inducing metastatic serous epithelial ovarian cancer. *Cancer research.* 2012;72(16):4141–4153.
2. Szabova L., Bupp S., Kamal M., *et al.* Pathway-Specific Engineered Mouse Allograft Models Functionally Recapitulate Human Serous Epithelial Ovarian Cancer. Katoh M., ed. *PLoS ONE.* 2014;9(4):e95649.

Collaboration Opportunity: Researchers at the NCI seek licensing and/or co-development research collaborations for the commercialization of agents for the treatment of SEOC.

Contact Information: Requests for copies of the patent application or inquiries about licensing, research collaborations, and co-development opportunities should be sent to John D. Hewes, Ph.D., email: *john.hewes@nih.gov.*

Dated: July 11, 2016.

John D. Hewes,

Technology Transfer Specialist, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2016–17419 Filed 7–22–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Pediatric Heart Network Clinical Research Centers (UG1).

Date: August 17–18, 2016

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Dupont Circle Hotel, 1500 New Hampshire Avenue NW., Washington, DC 20036.

Contact Person: Susan Wohler Sunnarborg, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National, Heart, Lung, and Blood Institute 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892 *sunnarborgsw@nhlbi.nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 19, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–17421 Filed 7–22–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: August 30, 2016.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 9100, Bethesda, MD 20892 (Teleconference).

Contact Person: Valerie L. Prenger, Ph.D., MPH, Acting Division Director, Division of Extramural Research Activities, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7214, Bethesda, MD 20892–7924, 301–435–0270, *prengerv@nhlbi.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/nhlbac/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 19, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–17420 Filed 7–22–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Mental Health First Aid Evaluation-NEW

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS) is requesting approval from the Office of Management and Budget (OMB) for new data collection activities associated with its Mental Health First Aid (MHFA) program.

This information is needed to evaluate implementation of MHFA and Youth Mental Health First Aid in three distinct grant programs: Project Advancing Wellness and Resilience in Education (AWARE) State Education Agency (SEA) Cooperative Agreements, which provide funding to support MHFA and YMHFA training to state education agencies; Project AWARE Local Education Agency (LEA) Grants, which provide funding to school districts; and Project AWARE Community (C), a new funding opportunity in fiscal year 2015 that is intended to support MHFA and YMHFA training through a wide range of community organizations.

The MHFA/YMHFA evaluation will address both overarching and program-specific questions related to the implementation and effectiveness of widespread dissemination of mental health literacy programs through these three distinct funding mechanisms and increase SAMHSA's understanding of training, referral benefits, and issues in varied milieu (*e.g.,* implementation climate, leadership). These evaluation questions are essential to address because, although MHFA/YMHFA has a track record and well-articulated theory of action, it is vital for SAMHSA to be able to identify factors that are expected to increase or decrease the extent MHFA/YMHFA is disseminated and implemented with quality.

This data collection is covered under the requirements of Public Law 103–62, the Government Performance and Results Act (GPRA) of 1993, Title 38, section 527, Evaluation and Data Collection, as well as 38 CFR 1.15, Standards for Program Evaluation.

SAMHSA is requesting clearance for four data collection instruments:

(1) MHFA/YMHFA Pre-Training Survey

(2) MHFA/YMHFA Post-Training Survey

(3) MHFA/YMHFA 3-Month and 6-Month Follow-Up Survey

(4) Qualitative protocol for interviews with site coordinators

The table below reflects the annualized hourly burden.

Instrument/Activity	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
MHFA/YMHFA Pre-Training Survey	22,800	1	22,800	.33	7,524
MHFA/YMHFA Post-Training Survey	22,800	1	22,800	.25	5,700
MHFA/YMHFA 3-Month Follow-Up Survey	19,380	1	19,380	.17	3,294
MHFA/YMHFA 6-Month Follow-Up Survey	17,100	1	17,100	.17	2,907
Qualitative Interviews	23	1	23	.75	17.25

Instrument/Activity	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Total	22,823		82,103		19,442

Written comments and recommendations concerning the proposed information collection should be sent by August 24, 2016 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov*. Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,
Statistician.

[FR Doc. 2016–17411 Filed 7–22–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.samhsa.gov/workplace.*

FOR FURTHER INFORMATION CONTACT: Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N03A, Rockville, Maryland 20857; 240–276–2600 (voice).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The "Mandatory Guidelines for Federal Workplace Drug Testing Programs," as amended in the revisions listed above, requires strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on urine specimens for federal agencies.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following HHS-certified laboratories and IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

HHS-Certified Instrumented Initial Testing Facilities

Dynacare, 6628 50th Street NW., Edmonton, AB Canada T6B 2N7, 780–784–1190 (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264
Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400 (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc., Aegis Analytical Laboratories)
Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)
Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)
Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)
Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917
DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890
Dynacare,* 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630 (Formerly: Gamma-Dynacare Medical Laboratories)
ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609
Fortes Laboratories, Inc., 25749 SW. Canyon Creek Road, Suite 600, Wilsonville, OR 97070, 503–486–1023
Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

MetroLab-Legacy Laboratory Services, 1225 NE. 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088, Testing for Veterans Affairs (VA) Employees Only

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774 (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, 818–737–6370 (Formerly: SmithKline Beecham Clinical Laboratories)

Redwood Toxicology Laboratory, 3700650 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027

STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Charles LoDico,

Chemist.

[FR Doc. 2016–17441 Filed 7–22–16; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5923–N–03]

Notice of a Federal Advisory Committee Meeting: Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice of a Federal Advisory Committee Meeting: Manufactured Housing Consensus Committee (MHCC).

SUMMARY: This notice sets forth the schedule and proposed agenda for a teleconference meeting of the MHCC. The teleconference meeting is open to the public. The agenda provides an opportunity for citizens to comment on the business before the MHCC.

DATES: The teleconference meeting will be held on August 9, 2016, 10:00 a.m. to 5:00 p.m. Eastern Daylight Time (EDT). The teleconference numbers are: US toll-free: 1–866–813–5287. Participant Code: 4325433. Webinar: *https://zoom.us/j/350303292;* Meeting ID: 350 303 292.

FOR FURTHER INFORMATION CONTACT: Pamela Beck Danner, Administrator and Designated Federal Official (DFO), Department of Housing and Urban Development, Office of Manufactured Housing Programs, 451 7th Street SW., Room 9168, Washington, DC 20410, telephone (202) 708–6423 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting provided in accordance with the Federal Advisory Committee Act, 5. U.S.C. App. 10(a)(2) through implementing regulations at 41 CFR § 102–3.150. The MHCC was established by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5403 (a)(3), as amended by the Manufactured Housing Improvement Act of 2000, (Pub. L. 106–569). According to 42 U.S.C. 5403, as amended, the purposes of the MHCC are to:

- Provide periodic recommendations to the Secretary to adopt, revise, and interpret the Federal manufactured housing construction and safety standards in accordance with this subsection;
- Provide periodic recommendations to the Secretary to adopt, revise, and interpret the procedural and enforcement regulations, including

regulation specifying the permissible scope and conduct of monitoring in accordance with subsection (b);

- Be organized and carry out its business in a manner that guarantees a fair opportunity for the expression and consideration of various positions and for public participation.

The MHCC is deemed an advisory committee not composed of Federal employees.

Public Comment: Citizens wishing to make comments on the business of the MHCC are encouraged to register before August 4, 2016, by contacting Home Innovation Research Labs, *Attention:* Kevin Kauffman, 400 Prince Georges Blvd., Upper Marlboro, MD 20774, or email to *mhcc@homeinnovation.com or call 1–888–602–4663.* Written comments are encouraged. The MHCC strives to accommodate citizen comments to the extent possible within the time constraints of the meeting agenda. Advance registration is strongly encouraged. The MHCC will also provide an opportunity for public comment on specific matters before the MHCC.

Tentative Agenda

August 9, 2016

I. Call to Order—Chair & Designated Federal Officer (DFO)
II. Opening Remarks—Chair
  A. Roll-Call—Administering Organization (AO)
  B. Introductions
  i. HUD Staff
  ii. Guests
  C. Administrative Announcements—DFO and AO
III. Approve MHCC draft minutes from January 19–21, MHCC Meeting
IV. Discussion on conduct of meeting
V. Review of Summary of DOE Proposed Rule on Manufactured Home Energy Standards (HUD Staff) DOE Power Point Summary and link to proposed rule can be found on HUD's Web site at: *hud.gov/mhs*
VI. Public Comments
VII. Lunch
VIII. Continue Review and Summary of DOE requests for comments on the proposed Rule
IX. Break
X. Committee recommendations on proposed rule
XI. Public Comments
XII. Wrap Up/Next Steps—DFO/AO
XIII. Adjourn

Dated: July 19, 2016.

Pamela Beck Danner,

Administrator, Office of Manufactured Housing Programs.

[FR Doc. 2016–17568 Filed 7–22–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

Western Gulf of Mexico Planning Area (WPA) Outer Continental Shelf (OCS) Oil and Gas Lease Sale 248 (WPA Sale 248); MMAA104000

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Final Notice of Sale.

SUMMARY: On Wednesday, August 24, 2016, the Bureau of Ocean Energy Management (BOEM) will open and publicly announce bids for blocks offered in the Western Gulf of Mexico Planning Area (WPA) Lease Sale 248 (WPA Sale 248), in accordance with the provisions of the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1331–1356, as amended) and the implementing regulations issued pursuant thereto (30 CFR parts 550 and 556). The WPA Sale 248 Final Notice of Sale (NOS) Package (Final NOS Package) contains information essential to potential bidders. Bidders are charged with knowing the contents of the documents contained in the Final NOS Package.

Date and Time: Bid opening for WPA Sale 248 will begin at 9:00 a.m. on Wednesday, August 24, 2016. All times referred to in this document are local time in New Orleans, unless otherwise specified.

Location: There will be a change in the bid opening process for this sale. Bid opening will still occur at the Mercedes-Benz Superdome, 1500 Sugarbowl Drive, New Orleans, Louisiana 70112, but the bid opening at the Superdome facility will not be open to the public. Instead, the bid opening will be available for the public to view in real-time on BOEM's Web site at *www.boem.gov* via video live-streaming beginning at 9:00 a.m. on the day of the sale. The use of live-streaming to announce bids is being implemented to provide greater access to a wider national and international audience while ensuring the security of BOEM staff. BOEM will also post the results on its Web site after bid opening and reading is completed.

Bid Submission Deadline: BOEM must receive all sealed bids between 8:00 a.m. and 4:00 p.m. on normal working days, and from 8:00 a.m. to the Bid Submission Deadline of 10:00 a.m. on Tuesday, August 23, 2016, the day before the lease sale. For more information on bid submission, see Section VII, "Bidding Instructions," of this document.

ADDRESSES: Interested parties, upon request, may obtain a compact disc (CD–ROM) containing the Final NOS Package by contacting the BOEM Gulf of Mexico (GOM) Region at the following address: Gulf of Mexico Region Public Information Office, Bureau of Ocean Energy Management, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, (504) 736–2519 or (800) 200–GULF, or by visiting the BOEM Web site at *http://www.boem.gov/Sale-248/.*

Table of Contents

This Final NOS includes the following sections:

I. Lease Sale Area
II. Statutes And Regulations
III. Lease Terms and Economic Conditions
IV. Lease Stipulations
V. Information to Lessees
VI. Maps
VII. Bidding Instructions
VIII. Bidding Rules and Restrictions
IX. Forms
X. The Lease Sale
XI. Delay of Sale

I. Lease Sale Area

Blocks Offered for Leasing: BOEM proposes to offer for bid in this lease sale all of the available unleased acreage in the WPA, except those blocks listed in "Blocks Not Offered for Leasing" below.

Blocks Not Offered for Leasing: The following whole and partial blocks are not offered for lease in this sale:

- Whole and partial blocks that lie within the boundaries of the Flower Garden Banks National Marine Sanctuary (Sanctuary) in the East and West Flower Garden Banks and Stetson Bank. The following list identifies all blocks affected by the Sanctuary boundaries:

High Island, East Addition, South Extension (Leasing Map TX7C)

Whole Block: A–398.

Portions of Blocks: A–366, A–367, A–374, A–375, A–383, A–384, A–385, A–388, A–389, A–397, A–399, A–401.

High Island, South Addition (Leasing Map TX7B)

Portions of Blocks: A–502, A–513.

Garden Banks (OPD NG15–02)

Portions of Blocks: 134, 135.

- The following blocks whose lease status is currently under appeal:

Matagorda Island (*Leasing Map TX4*) Block 632
Matagorda Island (*Leasing Map TX4*) Block 656
Matagorda Island (*Leasing Map TX4*) Block 657

Please Note: A CD–ROM (in ArcGIS and Acrobat (.pdf) format) containing all of the GOM Region leasing maps and official protraction diagrams (OPDs), is available from the BOEM Gulf of Mexico Region Public Information Office for a price of $15.00. The GOM Region leasing maps and OPDs also are available online for free in .pdf and .gra formats at *http://www.boem.gov/Official-Protraction-Diagrams.*

For the current status of all WPA leasing maps and OPDs, please refer to 66 FR 28002 (May 21, 2001), 67 FR 60701 (September 26, 2002), 72 FR 27590 (May 16, 2007), 76 FR 54787 (September 2, 2011), 79 FR 32572 (June 5, 2014), and 80 FR 3251 (January 22, 2015).

In addition, Supplemental Official OCS Block Diagrams (SOBDs) for blocks containing the U.S. 200-Nautical Mile Limit line and the U.S.-Mexico Maritime and Continental Shelf Boundary line are available. These SOBDs are available from the BOEM Gulf of Mexico Region Public Information Office and on BOEM's Web site at *http://www.boem.gov/Supplemental-Official-OCS-Block-Diagrams-SOBDs/.*

For additional information, or to order the above referenced maps or diagrams, please call the Mapping and Automation Section at (504) 731–1457.

All blocks being offered in the lease sale are shown on these leasing maps and OPDs. The available Federal acreage of each whole and partial block in this lease sale is shown in the document "List of Blocks Available for Leasing" included in the Final NOS Package. Some of these blocks may be partially leased or transected by administrative lines, such as the Federal/State jurisdictional line, or may not be offered. A bid on a block must include all of the available Federal acreage of that block. Information on the unleased portions of such blocks can be found in the document entitled "Western Planning Area, Lease Sale 248, August 24, 2016—Unleased Split Blocks and Available Unleased Acreage of Blocks with Aliquots and Irregular Portions under Lease or Deferred," which is included in this Final NOS Package.

For additional information, please call Mr. Lenny Coats, Chief of the Mapping and Automation Section, at (504) 731–1457.

II. Statutes and Regulations

Each lease is issued pursuant and subject to OCSLA, implementing regulations promulgated pursuant thereto, and other applicable statutes and regulations in existence upon the effective date of the lease, as well as those applicable statutes enacted and regulations promulgated thereafter, except to the extent that the after-enacted statutes and regulations explicitly conflict with an express provision of the lease. Each lease is subject to amendments to the applicable statutes and regulations, including, but not limited to, OCSLA, that do not explicitly conflict with an express provision of the lease. The lessee expressly bears the risk that such new or amended statutes and regulations (*i.e.,* those that do not explicitly conflict with an express provision of the lease) may increase or decrease the lessee's obligations under the lease.

III. Lease Terms and Economic Conditions

Lease Terms

OCS Lease Form

BOEM will use Form BOEM–2005 (October 2011) to convey leases resulting from this sale. This lease form may be viewed on the BOEM Web site at *http://www.boem.gov/About-BOEM/Procurement-Business-Opportunities/BOEM-OCS-Operation-Forms/BOEM-2005.aspx.* The lease form will be amended to conform with the specific terms, conditions, and stipulations applicable to each individual lease. The terms, conditions, and stipulations applicable to this sale are set forth below.

Initial Periods

Initial periods are summarized in the following table:

Water depth (Meters)	Initial period
0 to < 400	Standard initial period is 5 years; the lessee may earn an additional 3 years (i.e., for an 8-year extended initial period) if a well is spudded targeting hydrocarbons below 25,000 feet True Vertical Depth Subsea (TVD SS) during the first 5 years of the lease.
400 to < 800	Standard initial period is 5 years; the lessee will earn an additional 3 years (i.e., for an 8-year extended initial period) if a well is spudded during the first 5 years of the lease.
800 to < 1,600	Standard initial period is 7 years; the lessee will earn an additional 3 years (i.e., for a 10-year extended initial period) if a well is spudded during the first 7 years of the lease.
1,600 +	10 years.

(1) The standard initial period for a lease in water depths less than 400 meters issued as a result of this sale is 5 years. If the lessee spuds a well targeting hydrocarbons below 25,000 feet TVD SS within the first 5 years of the lease, then the lessee may earn an additional 3 years, resulting in an 8-year extended initial period. The lessee will earn the 8-year extended initial period when the well is drilled to a target below 25,000 feet TVD SS, or the lessee may earn the 8-year extended initial period in cases where the well targets, but does not reach, a depth below 25,000 feet TVD SS due to mechanical or safety reasons, where sufficient evidence is provided.

In order to earn the 8-year extended initial period, the lessee is required to submit to the BOEM Gulf of Mexico Regional Supervisor for Leasing and Plans, as soon as practicable, but in any instance not more than 30 days after completion of the drilling operation, a letter providing the well number, spud date, information demonstrating a target below 25,000 feet TVD SS and whether that target was reached, and if applicable, any safety, mechanical, or other problems encountered that prevented the well from reaching a depth below 25,000 feet TVD SS. This letter must request confirmation that the lessee earned the 8-year extended initial period. The extended initial period is not effective unless and until the lessee receives confirmation from BOEM. The Regional Supervisor for Leasing and Plans will confirm in writing, within 30 days of receiving the lessee's letter, whether the lessee has earned the extended initial period and update BOEM records accordingly.

A lessee that has earned the 8-year extended initial period by spudding a well with a hydrocarbon target below 25,000 feet TVD SS during the standard 5-year initial period of the lease will not be granted a suspension for that same period under the regulations at 30 CFR 250.175 because the lease is not at risk of expiring.

(2) The standard initial period for a lease in water depths ranging from 400 to less than 800 meters issued as a result

of this sale is 5 years. If the lessee spuds a well within the standard 5-year initial period of the lease, the lessee will earn an additional 3 years, resulting in an 8-year extended initial period.

In order to earn the 8-year extended initial period, the lessee is required to submit to the BOEM Gulf of Mexico Regional Supervisor for Leasing and Plans, as soon as practicable, but in no case more than 30 days after spudding a well, a letter providing the well number and spud date, and requesting confirmation that the lessee earned the 8-year extended initial period. Within 30 days of receipt of the request, the Regional Supervisor for Leasing and Plans will provide written confirmation of whether the lessee has earned the extended initial period and update BOEM records accordingly.

(3) The standard initial period for a lease in water depths ranging from 800 to less than 1,600 meters issued as a result of this sale will be 7 years. If the lessee spuds a well within the standard 7-year initial period of the lease, the lessee will earn an additional 3 years, resulting in a 10-year extended initial period.

In order to earn the 10-year extended initial period, the lessee is required to submit to the BOEM Gulf of Mexico Regional Supervisor for Leasing and Plans, as soon as practicable, but in no case more than 30 days after spudding a well, a letter providing the well number and spud date, and requesting confirmation that the lessee earned the 10-year extended initial period. Within 30 days of receipt of the request, the Regional Supervisor for Leasing and Plans will provide written confirmation of whether the lessee has earned the extended initial period and update BOEM records accordingly.

(4) The standard initial period for a lease in water depths 1,600 meters or deeper issued as a result of this sale will be 10 years.

Economic Conditions

Minimum Bonus Bid Amounts

- $25.00 per acre or fraction thereof for blocks in water depths less than 400 meters; and
- $100.00 per acre or fraction thereof for blocks in water depths 400 meters or deeper.

BOEM will not accept a bonus bid unless it provides for a cash bonus in the amount equal to, or exceeding, the specified minimum bid of $25.00 per acre or fraction thereof for blocks in water depths less than 400 meters, and $100.00 per acre or fraction thereof for blocks in water depths 400 meters or deeper.

Rental Rates

Annual rental rates are summarized in the following table:

RENTAL RATES PER ACRE OR FRACTION THEREOF

Water depth (meters)	Years 1–5	Years 6, 7, & 8 +
0 to < 200	$7.00	$14.00, $21.00, & $28.00
200 to < 400	11.00	$22.00, $33.00, & $44.00
400 +	11.00	$16.00

Escalating Rental Rates for Leases With an 8-Year Extended Initial Period in Water Depths Less Than 400 Meters

Any lessee with a lease in less than 400 meters water depth who earns an 8-year extended initial period will pay an escalating rental rate as shown above. The rental rates after the fifth year for blocks in less than 400 meters water depth will become fixed and no longer escalate, if another well is spudded targeting hydrocarbons below 25,000 feet TVD SS after the fifth year of the lease, and BOEM concurs that such a well has been spudded. In this case, the rental rate will become fixed at the rental rate in effect during the lease year in which the additional well was spudded.

Royalty Rate

- 18.75%.

Minimum Royalty Rate

- $7.00 per acre or fraction thereof per year for blocks in water depths less than 200 meters; and
- $11.00 per acre or fraction thereof per year for blocks in water depths 200 meters or greater.

Royalty Suspension Provisions

The issuance of leases with royalty suspension volumes (RSVs) or other forms of royalty relief is authorized under existing BOEM regulations at 30 CFR part 560. The specific details relating to eligibility and implementation of the various royalty relief programs, including those involving the use of RSVs, are codified in BSEE regulations at 30 CFR part 203. In this sale, the only royalty relief program being offered, which involves the provision of RSVs, relates to the drilling of ultra-deep wells in water depths of less than 400 meters, as described below.

Royalty Suspension Volumes on Gas Production From Ultra-Deep Wells

Leases issued as a result of this sale may be eligible for RSVs incentives on gas produced from ultra-deep wells pursuant to 30 CFR part 203. These regulations implement the requirements of the Energy Policy Act of 2005. Under this program, wells on leases in less than 400 meters water depth and completed to a drilling depth of 20,000 feet TVD SS or deeper receive a RSV of 35 billion cubic feet on the production of natural gas. This RSVs incentive is subject to applicable price thresholds set forth in the regulation at 30 CFR part 203.

IV. Lease Stipulations

One or more of the following stipulations may be applied to leases issued as a result of this sale. The detailed text of these stipulations is contained in the "Lease Stipulations" section of this Final NOS Package.

(1) Topographic Features;
(2) Military Areas;
(3) United Nations Convention on the Law of the Sea Royalty Payment;
(4) Protected Species; and
(5) Agreement between the United States of America and the United Mexican States Concerning Transboundary Hydrocarbon Reservoirs in the Gulf of Mexico.

V. Information to Lessees

The following Information to Lessees (ITL) clauses provide detailed information on certain issues pertaining to this oil and gas lease sale. The detailed text of the following ITL clauses is contained in the "Information to Lessees" section of this Final NOS Package.

(1) Navigation Safety;
(2) Ordnance Disposal Areas in the WPA;
(3) Existing and Proposed Artificial Reefs/Rigs-to-Reefs;
(4) Lightering Zones;
(5) Indicated Hydrocarbons List;

(6) Military Areas in the WPA;
(7) BSEE Inspection and Enforcement of Certain U.S. Coast Guard Regulations;
(8) Potential Sand Dredging Activities in the WPA;
(9) Notice of Arrival on the Outer Continental Shelf;
(10) Bidder/Lessee Notice of Obligations Related to Criminal/Civil Charges and Offenses, Suspension, or Debarment;
(11) Protected Species; and
(12) Proposed Flower Garden Banks Expansion.

VI. Maps

The maps pertaining to this lease sale may be found on the BOEM Web site at *http://www.boem.gov/Sale-248. The* following maps also are included in this Final NOS Package:

Lease Terms and Economic Conditions Map

The lease terms, economic conditions, and the blocks to which these terms and conditions apply are shown on the map entitled "Final, Western Planning Area, Lease Sale 248, August 24, 2016, Lease Terms and Economic Conditions."

Stipulations and Deferred Blocks Map

The blocks to which one or more lease stipulations may apply are shown on the map entitled "Final, Western Planning Area, Lease Sale 248, August 24, 2016, Stipulations and Deferred Blocks Map."

VII. Bidding Instructions

Bids may be submitted in person or by mail at the address below. Instructions on how to submit a bid, secure payment of the advance bonus bid deposit (if applicable), and what information must be included with the bid are as follows:

Bid Form

For each block bid upon, a separate sealed bid must be submitted in a sealed envelope (as described below) and include the following:

- Total amount of the bid in whole dollars only;
- sale number;
- sale date;
- each bidder's exact name;
- each bidder's proportionate interest, stated as a percentage, using a maximum of five decimal places (*e.g.*, 33.33333%);
- typed name and title, and signature of each bidder's authorized officer;
- each bidder's qualification number;
- map name and number or OPD name and number;
- block number; and
- statement acknowledging that the bidder(s) understands that this bid legally binds the bidder(s) to comply with all applicable regulations, including payment of one-fifth of the bonus bid amount on all apparent high bids.

The information required on the bid(s) is specified in the document "Bid Form" contained in the Final NOS Package. A blank bid form is provided in the Final NOS Package for convenience and may be copied and completed with the necessary information described above.

Bid Envelope

Each bid must be submitted in a separate sealed envelope labeled as follows:

- "Sealed Bid for Oil and Gas Lease Sale 248, not to be opened until 9:00 a.m. Wednesday, August 24, 2016;"
- map name and number or OPD name and number;
- block number for block bid upon; and
- the exact name and qualification number of the submitting bidder only.

The Final NOS Package includes a sample bid envelope for reference.

Mailed Bids

If bids are mailed, please address the envelope containing the sealed bid envelope(s) as follows: Attention: Leasing and Financial Responsibility Section, BOEM Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Contains Sealed Bids for WPA Oil and Gas Lease Sale 248, Please Deliver to Ms. Cindy Thibodeaux, 2nd Floor, Immediately.

Please Note: Bidders mailing bid(s) are advised to call Ms. Cindy Thibodeaux at (504) 736–2809 or Mr. Carrol Williams at (504) 736- 2803, immediately after putting their bid(s) in the mail. If BOEM receives bids later than the Bid Submission Deadline, the BOEM Regional Director (RD) will return those bids unopened to bidders. Please see "Section XI. Delay of Sale" regarding BOEM's discretion to extend the Bid Submission Deadline in the case of an unexpected event (*e.g.*, flooding or travel restrictions) and how bidders can obtain more information on such extensions.

Advance Bonus Bid Deposit Guarantee

Bidders that are not currently an OCS oil and gas lease record title holder or designated operator, or those that ever have defaulted on a one-fifth bonus bid deposit, by Electronic Funds Transfer (EFT) or otherwise, must guarantee (secure) the payment of the one-fifth bonus bid deposit prior to bid submission using one of the following four methods:

- Provide a third-party guarantee;
- amend an areawide development bond via bond rider;
- provide a letter of credit; or
- provide a lump sum payment in advance via EFT.

For more information on EFT procedures, see Section X of this document entitled "The Lease Sale."

Affirmative Action

Prior to bidding, each bidder should file Equal Opportunity Affirmative Action Representation Form BOEM–2032 (October 2011) and Equal Opportunity Compliance Report Certification Form BOEM–2033 (October 2011) with the BOEM GOM Region Adjudication Section. This certification is required by 41 CFR part 60 and Executive Order No. 11246, issued September 24, 1965, as amended by Executive Order No. 11375, issued October 13, 1967. Both forms must be on file for the bidder(s) in the GOM Region Adjudication Section prior to the execution of any lease contract.

Geophysical Data and Information Statement

The Geophysical Data and Information Statement (GDIS) is composed of three parts:

(1) The "Statement" page includes the company representatives' information and lists of blocks bid on that used proprietary data and those blocks bid on that did not use proprietary data;
(2) the "Table" listing the required data about each proprietary survey used (see below); and
(3) the "Maps" being the live trace maps for each survey that are identified in the GDIS statement and table.

Every bidder submitting a bid on a block in WPA Sale 248, or participating as a joint bidder in such a bid, must submit at the time of bid submission all three parts of the GDIS. A bidder must submit the GDIS *even if a joint bidder or bidders on a specific block also have submitted a GDIS.* Any speculative data that has been reprocessed externally or "in-house" is considered proprietary due to the proprietary processing and is no longer considered speculative.

The GDIS must be submitted in a separate and sealed envelope, and identify all proprietary data; reprocessed speculative data, and/or any Controlled Source Electromagnetic surveys, Amplitude Versus Offset, Gravity, or Magnetic data; or other information used as part of the decision to bid or participate in a bid on the block.

The GDIS statement must include the name, phone number, and full address of a contact person and an alternate who are *both knowledgeable about the* *information and data listed and who are available for 30 days after the sale date.* The GDIS statement also must include a list of all blocks bid upon that did not use proprietary or reprocessed pre- or post-stack geophysical data and information as part of the decision to bid or to participate as a joint bidder in the bid. The GDIS statement must be submitted even if no proprietary geophysical data and information were used in bid preparation for the block.

The GDIS table should have columns that clearly state the sale number; the bidder company's name; the block area and block number bid on; the owner of the original data set (*i.e.,* who initially acquired the data); the industry's original name of the survey (*e.g.,* E Octopus); the BOEM permit number for the survey; whether the data set is a fast track version; whether the data is speculative or proprietary; the data type (*e.g.,* 2–D, 3–D, or 4–D; pre-stack or post-stack; and time or depth); migration algorithm (*e.g.,* Kirchhoff Migration, Wave Equation Migration, Reverse Migration, Reverse Time Migration) of the data; and areal extent of bidder survey (*i.e.,* number of line miles for 2–D or number of blocks for 3–D). Provide the computer storage size, to the nearest gigabyte, of each seismic data and velocity volume used to evaluate the lease block in question. This information will be used in estimating the reproduction costs for each data set, if applicable. The availability of reimbursement of production costs will be determined consistent with 30 CFR 551.13. The next column should state who reprocessed the data (*e.g.,* external company name or "in-house") and when final reprocessing was completed (month and year). If the data was sent to BOEM for bidding in a previous lease sale, list the date the data was processed (month and year) and indicate if Amplitude Versus Offset (AVO) data was used in the evaluation. BOEM reserves the right to query about alternate data sets, to quality check, and to compare the listed and alternative data sets to determine which data set most closely meets the needs of the fair market value determination process. An example of the preferred format of the table may be found in the Final NOS Package, and a blank digital version of the preferred table may be accessed on the WPA Sale 248 Web page at *http://www.boem.gov/Sale-248/.*

The GDIS maps are live trace maps (in .pdf and ArcGIS shape files) that should be submitted for each *proprietary* survey that is identified in the GDIS table. They should illustrate the actual areal extent of the proprietary geophysical data in the survey (see the "Example of Preferred Format" in the Final NOS Package for additional information).

Pursuant to 30 CFR 551.12 and 30 CFR 556.501, as a condition of the sale, the BOEM Gulf of Mexico RD requests that all bidders and joint bidders submit the proprietary data identified on their GDIS within 30 days after the lease sale (unless they are notified after the lease sale that BOEM has withdrawn the request). This request only pertains to proprietary data that is not commercially available. Commercially available data is not required to be submitted to BOEM, and reimbursement will not be provided if such data is submitted by a bidder. The BOEM Gulf of Mexico RD will notify bidders and joint bidders of any withdrawal of the request, for all or some of the proprietary data identified on the GDIS, within 15 days of the lease sale. Pursuant to 30 CFR part 551 and 30 CFR 556.501 as a condition of this sale, all bidders required to submit data must ensure that the data is received by BOEM no later than the 30th day following the lease sale, or the next business day if the submission deadline falls on a weekend or Federal holiday. The data must be submitted to BOEM at the following address: Bureau of Ocean Energy Management, Resource Studies, MS 881A, 1201 Elmwood Park Blvd., New Orleans, LA 70123–2304.

BOEM recommends that bidders mark the submission's external envelope as "Deliver Immediately to DASPU." BOEM also recommends that the data be submitted in an internal envelope, or otherwise marked, with the following designation: "Proprietary Geophysical Data Submitted Pursuant to Lease Sale 248 and used during evaluation of Block."

In the event a person supplies any type of data to BOEM, that person must meet the following requirements to qualify for reimbursement:

(1) Persons must be registered with the System for Award Management (SAM), formerly known as the Central Contractor Registration (CCR). CCR usernames will not work in SAM. A new SAM User Account is needed to register or update an entity's records. The Web site for registering is *https://www.sam.gov.*

(2) Persons must be enrolled in the Department of the Treasury's Internet Payment Platform (IPP) for electronic invoicing. The person must enroll in the IPP at *https://www.ipp.gov/.* Access then will be granted to use the IPP for submitting requests for payment. When a request for payment is submitted, it must include the assigned Purchase Order Number on the request.

(3) Persons must have a current On-line Representations and Certifications Application at *https://www.sam.gov.*

Please Note: The GDIS Information Table must be submitted digitally, preferably as an Excel spreadsheet, on a CD or DVD along with the seismic data map(s). If bidders have any questions, please contact Ms. Dee Smith at (504) 736–2706, or Mr. John Johnson at (504) 736–2455.

Bidders should refer to Section X of this document, "The Lease Sale: Acceptance, Rejection, or Return of Bids," regarding a bidder's failure to comply with the requirements of the Final NOS, including any failure to submit information as required in this Final NOS or Final NOS Package.

Telephone Numbers/Addresses of Bidders

BOEM requests that bidders provide this information in the suggested format prior to or at the time of bid submission. The suggested format is included in the Final NOS Package. The form must not be enclosed inside the sealed bid envelope.

Additional Documentation

BOEM may require bidders to submit other documents in accordance with 30 CFR 556.501.

VIII. Bidding Rules and Restrictions

Restricted Joint Bidders

On May 17, 2016, BOEM published the most recent List of Restricted Joint Bidders in the **Federal Register** at 81 FR 30548. Potential bidders are advised to refer to the **Federal Register**, prior to bidding, for the most current List of Restricted Joint Bidders in place at the time of the lease sale. Please refer to the joint bidding provisions at 30 CFR 556.511 and 556.512.

Authorized Signatures

All signatories executing documents on behalf of bidder(s) must execute the same in conformance with the BOEM qualification records. Bidders are advised that BOEM considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including payment of one-fifth of the bonus bid on all high bids. A statement to this effect must be included on each bid form (see the document "Bid Form" contained in the Final NOS Package).

Unlawful Combination or Intimidation

BOEM warns bidders against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

Bid Withdrawal

Bids may be withdrawn only by written request delivered to BOEM prior to the Bid Submission Deadline. The withdrawal request must be on company letterhead and must contain the bidder's name, its BOEM qualification number, the map name/number, and the block number(s) of the bid(s) to be withdrawn. The withdrawal request must be executed by an authorized signatory of the bidder and must be executed in conformance with the BOEM qualification records. Signatories must be authorized to bind their respective legal business entities (*e.g.,* a corporation, partnership, or LLC), and documentation must be on file with BOEM setting forth this authority to act on the business entity's behalf for purposes of bidding and lease execution under OCSLA (*e.g.,* business charter or articles, incumbency certificate, or power of attorney). The name and title of the authorized signatory must be typed under the signature block on the withdrawal request. The BOEM Gulf of Mexico RD, or the RD's designee, will indicate any approval by signing and dating the withdrawal request.

Bid Rounding

The bonus bid amount must be stated in whole dollars. Minimum bonus bid calculations, including all rounding, for all blocks are shown in the document entitled "List of Blocks Available for Leasing," which is included in this Final NOS Package. If the acreage of a block contains a decimal figure, then prior to calculating the minimum bonus bid, BOEM has rounded up to the next whole acre. The appropriate minimum rate per acre was then applied to the whole (rounded up) acreage. If this calculation resulted in a fractional dollar amount, the minimum bonus bid was rounded up to the next whole dollar amount. The bonus bid amount must be greater than or equal to the minimum bonus bid in whole dollars.

IX. Forms

The Final NOS Package includes instructions, samples, and/or the preferred format for the following items. BOEM strongly encourages bidders to use these formats; should bidders use another format, they are responsible for including all the information specified for each item in this Final NOS Package.

(1) Bid Form;
(2) Sample Completed Bid;
(3) Sample Bid Envelope;
(4) Sample Bid Mailing Envelope;
(5) Telephone Numbers/Addresses of Bidders Form;
(6) GDIS Form; and
(7) GDIS Envelope Form.

X. The Lease Sale

Bid Opening and Reading

Sealed bids received in response to the Final NOS will be opened at the place, date, and hour specified in the "DATE AND TIME" and "LOCATION" sections of this document. The opening of the bids is for the sole purpose of publicly announcing and recording the bids received; no bids will be accepted or rejected at that time.

Bonus Bid Deposit for Apparent High Bids

Each bidder submitting an apparent high bid must submit a bonus bid deposit to the U.S. Department of the Interior's Office of Natural Resources Revenue (ONRR) equal to one-fifth of the bonus bid amount for each such bid. A copy of the notification of the high bidder's one-fifth bonus bid amount may be obtained on the BOEM Web site at *http://www.boem.gov/Sale-248/* under the heading "Notification of EFT 1/5 Bonus Liability" after 1:00 p.m. on the day of the sale. All payments must be deposited electronically into an interest-bearing account in the U.S. Treasury by 11:00 a.m. Eastern Time the day following the bid reading (no exceptions). Account information is provided in the "Instructions for Making Electronic Funds Transfer Bonus Payments" found on the BOEM Web site identified above.

BOEM requires bidders to use EFT procedures for payment of one-fifth bonus bid deposits for WPA Sale 248, following the detailed instructions contained on the ONRR Payment Information Web page at *http://www.onrr.gov/FM/PayInfo.htm.* Acceptance of a deposit does not constitute and will not be construed as acceptance of any bid on behalf of the United States.

Withdrawal of Blocks

The United States reserves the right to withdraw any block from this lease sale prior to issuance of a written acceptance of a bid for the block.

Acceptance, Rejection, or Return of Bids

The United States reserves the right to reject any and all bids. No bid will be accepted, and no lease for any block will be awarded to any bidder, unless:

(1) the bidder has complied with all requirements of the Final NOS Package and applicable regulations;

(2) the bid submitted is the highest valid bid; and

(3) the amount of the bid has been determined to be adequate by the authorized officer.

Any bid submitted that does not conform to the requirements of the Final NOS and Final NOS Package, OCSLA, BOEM regulations, or other applicable statutes or regulations, may be rejected and returned to the bidder. The U.S. Department of Justice and the Federal Trade Commission will review the results of the lease sale for antitrust issues prior to the acceptance of bids and issuance of leases.

Bid Adequacy Review Procedures

To ensure that the U.S. Government receives a fair return for the conveyance of leases from this sale, high bids will be evaluated in accordance with BOEM's bid adequacy procedures which are available at *http://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Regional-Leasing/Gulf-of-Mexico-Region/Bid-Adequacy-Procedures.aspx.*

Lease Award

BOEM requires each bidder awarded a lease to:

(1) execute all copies of the lease (Form BOEM–2005 [October 2011], as amended);

(2) pay by EFT the balance of the bonus bid amount and the first year's rental for each lease issued in accordance with the requirements of 30 CFR 218.155 and 556.520; and

(3) satisfy the bonding requirements of 30 CFR part 556, subpart I, as amended.

ONRR requests that only one transaction be used for payment of the four-fifths bonus bid amount and the first year's rental.

XI. Delay of Sale

The BOEM Gulf of Mexico RD has the discretion to change any date, time, and/or location specified in the Final NOS Package in case of an event that the BOEM Gulf of Mexico RD deems may interfere with the carrying out of a fair and orderly lease sale process. Such events could include, but are not limited to, natural disasters (*e.g.,* earthquakes, hurricanes, and floods), wars, riots, acts of terrorism, fires, strikes, civil disorder, or other events of a similar nature. In case of such events, bidders should call (504) 736–0557, or access the BOEM Web site at *http://www.boem.gov,* for information regarding any changes.

Dated: July 18, 2016.

Abigail Ross Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2016–17574 Filed 7–22–16; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2016–0008]

Gulf of Mexico, Outer Continental Shelf (OCS), Western Planning Area (WPA) Oil and Gas Lease Sale 248; MMAA104000

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of availability of a record of decision

SUMMARY: BOEM is announcing the availability of a Record of Decision for proposed oil and gas WPA Lease Sale 248. This Record of Decision identifies the Bureau's selected alternative for proposed WPA Lease Sale 248, which is analyzed in the *Gulf of Mexico OCS Oil and Gas Lease Sale: 2016; Western Planning Area Lease Sale 248 Final Supplemental Environmental Impact Statement* (WPA 248 Supplemental EIS). BOEM has selected the proposed action, which is identified as BOEM's preferred alternative (Alternative A) in the WPA 248 Supplemental EIS. The Record of Decision and associated information are available on the agency's Web site at *http://www.boem.gov/nepaprocess/.*

FOR FURTHER INFORMATION CONTACT: For more information on the Record of Decision, you may contact Mr. Gary D. Goeke, Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard (GM 623E), New Orleans, Louisiana 70123–2394. You may also contact Mr. Goeke by telephone at 504–736–3233.

SUPPLEMENTARY INFORMATION: In the WPA 248 Supplemental EIS, BOEM evaluated three alternatives, which are summarized below with regard to proposed WPA Lease Sale 248:

Alternative A—The Proposed Action: This is BOEM's preferred alternative. This alternative would offer for lease all unleased blocks within the proposed WPA lease sale area for oil and gas operations with the following exception: whole and partial blocks within the boundary of the Flower Garden Banks National Marine Sanctuary (*i.e.*, the boundary as of the publication of the WPA 248 Supplemental EIS).

All unleased whole and partial blocks in the WPA that BOEM will offer for leasing in proposed WPA Lease Sale 248 are listed in the document "List of Blocks Available for Leasing," which is included in the Final Notice of Sale for WPA Lease Sale 248 being published contemporaneously. The proposed WPA lease sale area encompasses nearly all of the WPA's 28.58 million acres. As of June 2016, approximately 23.7 million acres of the proposed WPA lease sale area are unleased. The estimated amount of resources projected to be developed as a result of the proposed WPA lease sale is 0.116–0.200 billion barrels of oil (BBO) and 0.538–0.938 trillion cubic feet (Tcf) of gas.

Alternative B—Exclude the Unleased Blocks Subject to the Topographic Features Stipulation: This alternative would offer for lease all unleased blocks within the proposed WPA lease sale area, as described for the proposed action (Alternative A), but it would exclude from leasing any unleased blocks subject to the Topographic Features Stipulation. The estimated amount of resources projected to be developed under this alternative is 0.116–0.200 BBO and 0.538–0.938 Tcf of gas. The number of blocks that would not be offered under Alternative B represents only a small percentage of the total number of blocks to be offered under Alternative A; therefore, it is expected that the levels of activity for Alternative B would be essentially the same as those projected for the WPA proposed action.

Alternative C—No Action: This alternative is the cancellation of proposed WPA Lease Sale 248 and is identified as the environmentally preferred alternative.

Lease Stipulations—The WPA 248 Supplemental EIS describes all lease stipulations, which are included in the Final Notice of Sale Package. The five lease stipulations for proposed WPA Lease Sale 248 are the Topographic Features Stipulation, the Military Areas Stipulation, the Protected Species Stipulation, the United Nations Convention on the Law of the Sea Royalty Payment Stipulation, and the Stipulation on the Agreement between the United States of America and the United Mexican States Concerning Transboundary Hydrocarbon Reservoirs in the Gulf of Mexico. Several of these lease stipulations have been developed to help mitigate potential impacts from oil and gas activities. All practicable means to avoid or minimize environmental harm from the selected alternative at the lease sale stage are being adopted through application of these stipulations. The stipulations will be added as lease terms where applicable and will therefore be enforceable as part of the lease. Appendix A of the WPA 246 Supplemental EIS, which is incorporated by reference into the WPA 248 Supplemental EIS, provides a list and description of standard post-lease mitigating measures that may be required by BOEM or the Bureau of Safety and Environmental Enforcement as a result of post-lease plan and permit review processes for the Gulf of Mexico OCS Region.

After careful consideration, BOEM has selected the proposed action, which is identified as BOEM's preferred alternative (Alternative A) in the WPA 248 Supplemental EIS. BOEM's selection of the preferred alternative meets the purpose and need for the proposed action, as identified in the WPA 248 Supplemental EIS, and reflects an orderly resource development with protection of the human, marine, and coastal environments while also ensuring that the public receives an equitable return for these resources and that free-market competition is maintained.

Authority: This Notice of Availability of a Record of Decision is published pursuant to the regulations (40 CFR part 1503) implementing the provisions of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Dated: July 18, 2016.

Abigail Ross Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2016–17566 Filed 7–22–16; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Media Workflow Association, Inc.

Notice is hereby given that, on June 22, 2016, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Advanced Media Workflow Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Arkena, Paris, FRANCE; DirectOut GmbH, Mittweida, GERMANY; Macnica, Inc., Solana Beach, CA; MNC Software, Inc., San Diego, CA; MOG Technologies, SA, Maia, PORTUGAL; Real-Time Innovations, Sunnyvale, CA; Ross Video, Ottawa, Ontario, CANADA; Sebastien Crème (individual member), Paris, FRANCE; and Carl Fleischhauer (individual member), Port Republic, MD, have been added as parties to this venture.

Also, MOG Solutions SA, Maia, PORTUGAL; and National TeleConsultants, Glendale, CA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Advanced Media Workflow Association, Inc. intends to file additional written notifications disclosing all changes in membership.

On March 28, 2000, Advanced Media Workflow Association, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on March 23, 2016. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 18, 2016 (81 FR 22633).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–17434 Filed 7–22–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Integrated Photonics Institute for Manufacturing Innovation Operating Under the Name of the American Institute for Manufacturing Integrated Photonics

Notice is hereby given that, on June 16, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Integrated Photonics Institute for Manufacturing Innovation operating under the name of the American Institute for Manufacturing Integrated Photonics ("AIM Photonics"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: The Research Foundation for the State University of New York, acting on behalf of the State University of New York Polytechnic Institute, Albany, NY; The Trustees of Columbia University in the City of New York, New York, NY; The Regents of the University of California, on behalf of its Santa Barbara campus, Santa Barbara, CA; Massachusetts Institute of Technology, Cambridge, MA; Arizona Board of Regents on behalf of the University of Arizona, Tucson, AZ; The Rector and Visitors of the University of Virginia, Charlottesville, VA; and SunEdison Semiconductor Limited, St. Peters, MO.

The general area of AIM Photonics' planned activity is research, development and demonstration in the manufacture of integrated photonics. AIM Photonics seeks to (1) advance integrated photonic circuit manufacturing technology development while simultaneously providing access to state-of-the-art fabrication, packaging, and testing capabilities for commercial enterprises, academia and the government; (2) create an adaptive integrated photonic circuit workforce capable of meeting industry needs and thus further increasing domestic competitiveness; and (3) meet participating commercial, defense and civilian agency needs in this burgeoning technology area. AIM Photonics became the sixth Institute for Manufacturing Innovation. Its objective is to increase manufacturing in the United States.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–17435 Filed 7–22–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. VA Partners I, LLC, ValueAct Capital Master Fund, LP, and ValueAct Co-Invest International, LP; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Northern District of California in *United States of America* v. *VA Partners I, LLC, et al.*, Civil Action No. 16-cv-01672. On April 4, 2016, the United States filed a Complaint against VA Partners I, LLC, ValueAct Capital Master Fund, L.P. and ValueAct Co-Invest International, L.P. (collectively "ValueAct" or "Defendants") alleging that ValueAct's acquisitions of voting securities of Halliburton Company and Baker Hughes Incorporated violated Section 7A of the Clayton Act, 15 U.S.C. 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvement Act of 1976 (the "HSR Act"). The proposed Final Judgment requires the Defendants to pay a civil penalty of $11,000,000 and further prohibits Defendants from engaging in conduct of the sort alleged in the Complaint, in violation of the HSR Act.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's Web site at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the Northern District of California. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's Web site, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Kathleen S. O'Neill, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, Department of Justice, 450 Fifth Street NW., Suite 8000, Washington, DC 20530 (telephone: 202–307–2931).

/s/ ____________________

Patricia A. Brink,

Director of Civil Enforcement.

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[Additional counsel listed on signature page]

Attorneys for Plaintiff United States of America

United States District Court for the Northern District of California San Francisco Division

United States of America, Plaintiff, v. *VA Partners I, LLC, Valueact Capital Master*

Fund, L.P., Valueact Co-Invest International, L.P., Defendants.

Case No.: 16-cv-01672
Judge: William Alsup
Filed: 04/04/2016

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to obtain civil penalties and equitable relief against the Defendants (collectively, "ValueAct") for failing to comply with the premerger notification and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act"), and alleges as follows:

I. Introduction

1. The Hart-Scott-Rodino Act, 15 U.S.C. 18a, is an essential part of modern antitrust enforcement. It requires purchasers of voting securities in excess of a certain value to notify the Department of Justice and the Federal Trade Commission and to observe a waiting period before consummating the transaction. These obligations extend to acquisitions of minority interests. One limited exemption to these obligations applies if the purchaser's holdings constitute less than ten percent of the stock of the company and the acquisition is "solely for the purpose of investment"—that is, the purchaser has no intention of participating in the company's business decisions.

2. ValueAct promotes itself as having a strategy of "active, constructive involvement" in the management of the companies in which it invests. This case concerns recent acquisitions by two ValueAct investment funds of over $2.5 billion of voting securities of Halliburton Company and Baker Hughes Incorporated. Halliburton and Baker Hughes are head-to-head competitors and two of the largest providers of oilfield products and services in the world. On November 17, 2014, Halliburton and Baker Hughes announced their intent to merge. Their proposed merger is the subject of an ongoing antitrust review in the United States and several other countries.

3. ValueAct began acquiring significant holdings of the two companies on the heels of the Halliburton/Baker Hughes merger announcement. From the beginning, ValueAct anticipated influencing the business decisions of the companies as the merger process unfolded. ValueAct sent memoranda to its investors outlining this strategy and explaining that purchasing a stake in each of these firms would allow it to "be a strong advocate for the deal to close," which would in turn "[i]ncrease probability of deal happening." If the deal encountered "regulatory issues," ValueAct "would be well positioned as an owner of both companies to help develop the new terms." ValueAct executives also discussed internally a back-up plan to "sell at least some of Baker's pieces" if the deal were blocked or abandoned.

4. ValueAct's purchases of Halliburton and Baker Hughes shares did not qualify for the narrow exemption from the requirements of the HSR Act for acquisitions made solely for the purpose of investment. ValueAct planned from the outset to take steps to influence the business decisions of both companies, and met frequently with executives of both companies to execute those plans.

5. These HSR Act violations allowed ValueAct to become one of the largest shareholders of both Halliburton and Baker Hughes, without providing the government its statutory right to notice and prior review of the stock purchases. ValueAct established these positions as Halliburton and Baker Hughes were being investigated for agreeing to a merger that threatens to substantially lessen competition in numerous markets. ValueAct intended to use its position as a major shareholder of these companies to obtain access to management, to learn information about the merger and the companies' strategies in private conversations with senior executives, to influence those executives to improve the chances that the merger would be completed, and to influence other business decisions whether or not the merger went forward.

6. The Court should assess a civil penalty of at least $19 million to address ValueAct's violations of the HSR Act, and should restrain ValueAct from further violations.

II. Jurisdiction and Venue

7. This Complaint is filed and these proceedings are instituted under Section 7A of the Clayton Act, 15 U.S.C. 18a, added by Title II of the HSR Act, to recover civil penalties and equitable relief for violations of that section.

8. This Court has jurisdiction over the Defendants and over the subject matter of this action pursuant to Section 7A(g) of the Clayton Act, 15 U.S.C. 18a(g), and pursuant to 28 U.S.C. 1331, 1337(a), 1345 and 1355. Each of the Defendants is engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. 18a(a)(1).

9. Venue is properly based in this District under Section 12 of the Clayton Act, 15 U.S.C. 22, and under 28 U.S.C. 1391(b)(2), (c)(2). Each of the Defendants transacts or has transacted business in this district and has its principal place of business here.

III. Intradistrict Assignment

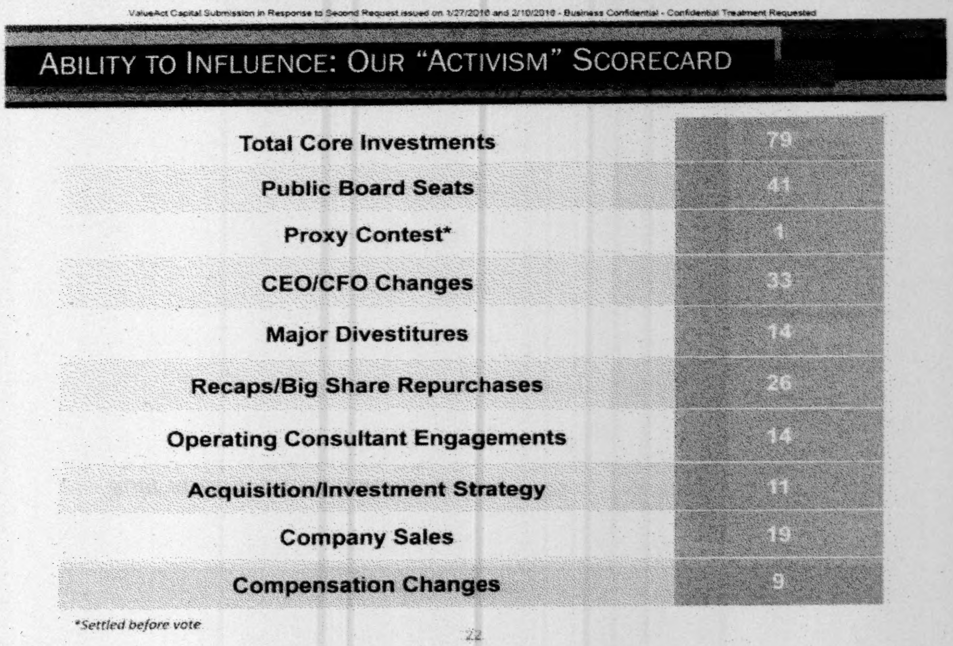
10. Assignment to the San Francisco Division is proper because this action arose primarily in San Francisco County. Many of the events that gave rise to the claims occurred in San Francisco, and Defendants' headquarters and principal places of business were during the relevant events, and continue to be, located in San Francisco.

IV. The Defendants

11. This case arises from acquisitions of stock over several months by two investment funds—ValueAct Master Capital Fund, L.P. ("Master Fund") and ValueAct Co-Invest International, L.P. ("Co-Invest Fund"). Though separate entities for purposes of the HSR Act, both funds have the same general partner—VA Partners I, LLC ("VA Partners"). Master Fund and Co-Invest Fund are organized under the laws of the British Virgin Islands, and VA Partners is organized under the laws of Delaware. Master Fund, Co-Invest Fund, and VA Partners (collectively, "ValueAct" or "Defendants") all have the same principal office and place of business in San Francisco, California.

12. ValueAct is well known as an activist investor. In contrast to other large funds that focus on passive investment strategies to generate returns, ValueAct's Web site explains that it pursues a strategy of "active, constructive involvement" in the management of the companies in which it invests. The Web site further states, "The goal in each investment is to work constructively with management and/or the company's board to implement a strategy or strategies that maximize returns for all shareholders."

13. ValueAct tracks its "activism" in these investments by various metrics, such as success in changing executive compensation, and touts these statistics in its presentations to potential investors as illustrated by the following slide from ValueAct's June 2015 presentation:



ValueAct Capital Submission in Response to Second Request issued on 1/27/2016 and 2/10/2016 - Business Confidential - Confidential Treatment Requested

ABILITY TO INFLUENCE: OUR "ACTIVISM" SCORECARD

Total Core Investments	79
Public Board Seats	41
Proxy Contest*	1
CEO/CFO Changes	33
Major Divestitures	14
Recaps/Big Share Repurchases	26
Operating Consultant Engagements	14
Acquisition/Investment Strategy	11
Company Sales	19
Compensation Changes	9

*Settled before vote

22

14. In presentations, ValueAct has explained that it likes "disciplined oligopolies" and looks to invest in businesses in "[o]ligopolistic markets, high barriers-to-entry."

15. ValueAct funds have previously violated the HSR Act by acquiring voting securities without making the required notifications. In 2003, ValueAct Capital Partners, L.P. filed corrective notifications for three prior acquisitions of voting securities. ValueAct outlined steps it would take to ensure future compliance with the HSR Act. No enforcement action was taken at that time. Master Fund then failed to make required filings with respect to three acquisitions that it made in 2005. ValueAct agreed to pay a $1.1 million civil penalty to settle an HSR Act enforcement action based on these violations.

V. Background

A. The Hart-Scott-Rodino Antitrust Improvements Act

16. The HSR Act requires parties to file a notification with the Federal Trade Commission and the Department of Justice and to observe a waiting period before consummating acquisitions of voting securities or assets that exceed certain value thresholds. These requirements give the antitrust enforcement agencies prior notice of, and information about, proposed transactions. The waiting period also provides the antitrust enforcement agencies with an opportunity to investigate and to seek an injunction to prevent the consummation of anticompetitive transactions.

17. The HSR Act contains certain limited exemptions to the notification and waiting period requirements. The acquirer of voting securities has the burden of showing eligibility for an exemption. One such exemption applies narrowly to acquisitions made "solely for the purpose of investment" if the voting securities held do not exceed ten percent of the outstanding voting securities of the issuer. 15 U.S.C. 18a(c)(9). The regulations implementing the Act explain that, to qualify for this exemption, the acquiring party must have "no intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer." 16 CFR 801.1(i)(1).

B. ValueAct's Initial Investment Decision and Strategy

18. After Halliburton and Baker Hughes announced their intent to merge on November 17, 2014, ValueAct began purchasing stock in each company through its Master Fund and Co-Invest Fund. ValueAct continued to make purchases in both companies for several months, eventually acquiring over $2.5 billion in securities of the two companies combined.

19. As ValueAct was acquiring stock in these two companies in December 2014 and early January 2015, its executives were developing strategies to use ValueAct's ownership position to influence management of each firm as necessary to increase the probability of the deal being completed. ValueAct's Master Fund crossed the applicable HSR Act reporting thresholds for Baker Hughes and Halliburton on December 1 and December 5, 2014, respectively, and Master Fund continued to build up its position as its executives discussed strategy. These discussions culminated in the drafting of memoranda that ValueAct sent to its investors on January 16, 2015. These memoranda—one about Baker Hughes and one about Halliburton—explained ValueAct's decision to acquire stakes in these competitors through its Master Fund, and offered investors the opportunity to increase their stakes in these firms through additional share purchases by ValueAct's Co-Invest Fund.

20. These memoranda and other contemporaneous documents show that ValueAct's most senior executives planned from the outset to play an active role at Halliburton and Baker Hughes. The lead ValueAct partner responsible for the Baker Hughes investment internally circulated a draft of an investor memorandum explaining that "our activist approach limits our downside in the unlikely case that the merger does not close." The draft further noted that if the merger were not completed, ValueAct "would likely seek to take a more active role in overseeing the company." ValueAct's CEO then

requested an insertion into the memorandum highlighting that ValueAct's "[a]ctive role" is an additional reason to invest in both companies.

21. Although the memoranda ultimately shared with investors watered down the words used to describe ValueAct's activist strategy, they still emphasized that purchasing a stake in Halliburton and Baker Hughes would "increase probability of deal happening" and would allow ValueAct to be "a strong advocate for the deal to close." ValueAct identified this as one of three "key considerations" supporting its investment decision. A contemporaneous email among ValueAct partners remarked that if Halliburton's shareholders threatened to vote against the deal, ValueAct's "position in HAL should be meaningful enough to have a substantial role in those conversations."

22. ValueAct also intended to help restructure the merger if it hit roadblocks. On December 16, 2014, ValueAct's CEO emailed his partners: "if we own both we can drive new terms to get the deal done if weird [expletive] is happening." ValueAct also expressed this view in its memos to investors: "In the event of further fundamental dislocation or regulatory issues, it is possible the deal would need to be restructured and we believe ValueAct Capital would be well positioned as an owner of both companies to help develop the new terms."

23. In a December 2014 internal email, a ValueAct partner observed that "[i]f the deal failed, the back-up plan would seem to be to sell at least some of Baker's pieces, and we think that we could get up to 12x EBITDA for just 2 of BHI's businesses—artificial lift and chemicals." ValueAct's memoranda to investors noted, "Recent transactions in each of those industries [specialty chemicals and artificial lift] suggest that these businesses are worth north of 10 times EBITDA." Moreover, the Baker Hughes memorandum explained that there are "numerous levers for the company to pull to drive margin expansion," and identified Baker Hughes's pressure pumping business as a good candidate for margin improvement.

24. Regardless of how the merger process unfolded, ValueAct intended to influence the business decisions of both companies. For example, on December 5, 2014, the day Master Fund's holdings in Halliburton crossed the HSR Act threshold, a ValueAct partner wrote an email to ValueAct's CEO about Halliburton: "Wonder if it would be possible to get the VRX [Valeant Pharmaceuticals] comp plan in from outside the board room?" The CEO responded "Yes. Good idea." (ValueAct had recently convinced management to change the executive compensation plan at another of its investments, Valeant Pharmaceuticals.)

25. ValueAct also intended to play a role in Halliburton's efforts to integrate the two firms. ValueAct told its investors that its stake in Halliburton "helps to further enhance our relationship with management and the board of directors as they work to complete the merger and integrate the business into Halliburton's existing operations."

C. ValueAct's Efforts To Influence the Management of Both Companies

26. Consistent with its investment strategy of "active, constructive involvement," ValueAct established a direct line to senior management at both Halliburton and Baker Hughes and met with them frequently from the time it started acquiring stock. From December 2014 through January 2016, ValueAct met in person or had teleconferences more than fifteen times with senior management of Halliburton or Baker Hughes, including meeting multiple times with the CEOs of both companies. ValueAct partners also exchanged a number of emails with management at both firms about the merger and the companies' respective operations.

27. ValueAct reached out to Baker Hughes immediately after it began purchasing shares. On December 1, 2014, the day Master Fund's holdings crossed the HSR Act threshold for Baker Hughes, a ValueAct partner told a Baker Hughes executive that ValueAct was positive on the merger but also liked "that 20% of [Baker Hughes's] revenue comes from non-capital intensive business lines which could command a big multiple if sold." A few days later, ValueAct's CEO met in person with the CFO of Baker Hughes. According to Baker Hughes's notes of the meeting, ValueAct's CEO "highlighted that it was critical that BHI continued focused [*sic*] on many of these improvement opportunities despite the acquisition. He specifically emphasized with graphs the largest gap/opportunities he saw." With respect to the gap in Baker Hughes's North American margins, ValueAct's CEO stated, "Looking to learn with BHI on how to close that GAP [*sic*]." ValueAct's CEO also discussed other areas "that he thought BHI should continue to focus on as there was a lot of improvement opportunity." According to the notes, the meeting ended with ValueAct's CEO "stating that they would remain in contact and sharing that they plan to be large shareholders of BHI."

28. On January 16, 2015, ValueAct filed a Beneficial Ownership Report (Schedule 13D) with the Securities and Exchange Commission publicly disclosing its substantial stake in Baker Hughes and reporting that it might discuss "competitive and strategic matters" with Baker Hughes management, and might "propos[e] changes in [Baker Hughes's] operations." Before submitting the Schedule 13D, ValueAct's CEO notified Halliburton's CEO of the impending filing on Baker Hughes, explaining that the filing "gives us the flexibility to engage with the company [Baker Hughes] on all issues." Later the same day, ValueAct's CEO emailed Halliburton's CEO a copy of its investment memoranda for both Halliburton and Baker Hughes.

29. By February, after ValueAct had completed its outreach to investors seeking capital for additional share purchases, ValueAct began acquiring stock in Halliburton and Baker Hughes through Co-Invest Fund. On March 10, 2015, Co-Invest Fund's holdings in Halliburton crossed the applicable HSR Act reporting threshold.

30. Also in early March, ValueAct contacted Halliburton to offer assistance in advance of the shareholder vote on the merger. ValueAct offered Halliburton "to speak with any of [Halliburton's] top shareholders about [ValueAct's] view of the merger prior to the vote." Halliburton responded that it would let ValueAct know if ValueAct's help became necessary.

31. In May 2015, ValueAct further engaged with Halliburton on the company's plans for post-merger integration. On May 13, ValueAct met with Halliburton's CEO to discuss actions that Halliburton could take in an attempt to achieve its target merger synergies. On May 27, a ValueAct partner called Halliburton's Chief Integration Officer to recommend a firm for real estate integration services. In a subsequent email exchange, another ValueAct partner emphasized the need to engage on these issues at the executive level, and stated that Halliburton's plan was "a traditional approach likely to leave value on the table." Instead, the partner identified alternative ways the real estate firm could work with Halliburton to help achieve the synergy goals.

32. ValueAct also followed through on its idea for changing Halliburton's executive compensation plan. On July 14, 2015, ValueAct contacted Halliburton's CEO to schedule a meeting to discuss executive compensation. At

the meeting, which ultimately occurred in September, ValueAct delivered a thirty-five-page presentation detailing ValueAct's preferred approach, commenting on Halliburton's current plan, and proposing specific changes.

D. Consistent With Its Initial Plans, ValueAct Worked To Restructure the Merger or To Sell Parts of Baker Hughes

33. ValueAct carefully monitored the status of the antitrust review process and intended to intervene with the management of each firm as necessary to increase the probability of the deal being completed. ValueAct met with Baker Hughes's CEO in May 2015 and according to ValueAct's notes of that meeting, Baker Hughes's CEO "seemed pretty worried about anti-trust, and implied odds deal goes through 70% or lower in his mind." ValueAct then continued to push management of both companies to preserve the deal or, if these efforts failed, to sell off pieces of Baker Hughes.

34. On August 31, 2015, ValueAct met with Baker Hughes's CEO "to plant the seed to seek alternative options with other buyers if the deal falls through." In its initial investment analysis, the ValueAct partners had discussed selling individual Baker Hughes businesses as a back-up plan if the merger failed. ValueAct presented an updated analysis to argue this case to Baker Hughes. ValueAct also proposed restructuring the deal with Halliburton, suggesting that Baker Hughes should sell its pressure pumping, artificial lift, and specialty chemical businesses to Halliburton at a premium in lieu of receiving the merger termination fee.

35. According to ValueAct notes from the meeting, Baker Hughes's CEO was "very committed to running BHI stand-alone if the deal fails and did not seem to entertain the idea of shopping the business piecemeal to other buyers." The notes explain that ValueAct agreed that the Baker Hughes CEO's plan to "focus on technology-based product lines, and grow the business organically in these areas seems like the right areas to focus for the stand-alone company." But this plan was not what the ValueAct executives hoped for: "the problem is that this story seems like a 4–5 year period with the stock not generating a great return over that period." According to Baker Hughes's notes of the meeting, the ValueAct executives registered disappointment with Baker Hughes's CEO, and informed him that Halliburton and Baker Hughes were "the only investment ValueAct had where they did not have board seats."

36. On September 18, 2015, ValueAct pitched its restructuring plan to Halliburton's CEO, advocating that Halliburton pursue selective acquisitions of Baker Hughes's production chemicals and artificial lift businesses. According to Halliburton's notes of the call, ValueAct suggested that Halliburton should offer a substantial sum to acquire these businesses and settle the $3.5 billion merger break-up fee at the same time.

37. During this conversation with the CEO of Halliburton, ValueAct shared Baker Hughes's plans if the merger could not close. According to Halliburton's notes of the call, ValueAct stated that if the merger could not be consummated, Baker Hughes's CEO intended to "run the company like he did before." Halliburton's CEO then asked whether Baker Hughes's CEO was "listening to VA." A ValueAct partner replied that Baker Hughes's CEO "realize [*sic*] can go to his board directly." ValueAct also asked Halliburton's CEO if there was "anything we [ValueAct] can do to be helpful," and explicitly offered to "apply pressure to BHI CEO regarding unhappiness if he continues to run co. if deal does not go through." In short, ValueAct offered to use its position as a shareholder to pressure Baker Hughes's management to change its business strategy in ways that could affect Baker Hughes's competitive future.

38. ValueAct and Halliburton's willingness to discuss the competitive future of Baker Hughes in the absence of a merger is further confirmed by notes contained in ValueAct's files. These notes list "3 options that Lazard [presumably Halliburton's CEO, David Lesar] discussed" with respect to Baker Hughes. One of those options was "Cripple a competitor."

39. On November 5, 2015, ValueAct made a detailed fifty-five page presentation to Baker Hughes's CEO proposing operational and strategic changes to the company. The same day, ValueAct lobbied Halliburton's senior management to pursue alternative ways to get the deal done.

VI. Violations Alleged

40. Plaintiff alleges and incorporates paragraphs 1 through 39 as if set forth fully herein.

41. The HSR Act provides that any person, or any officer, director, or partner thereof, who fails to comply with any provision of the HSR Act is liable to the United States for a civil penalty for each day during which such person is in violation. Master Fund and Co-Invest Fund are each considered a separate person under the Act and are each obligated to comply with its requirements.

A. Count 1: Master Fund's Acquisition of Halliburton

42. The HSR Act and applicable implementing regulations required that Master Fund file a notification and report form with the antitrust enforcement agencies and observe a waiting period before acquiring any voting securities in Halliburton that would result in Master Fund holding an aggregate total amount of voting securities in excess of the $50 million threshold, as adjusted ($75.9 million in December 2015, and $76.3 million beginning in February 2016).

43. On or about December 4, 2014, Master Fund began purchasing Halliburton voting securities. On or about December 5, 2014, Master Fund's aggregate value of Halliburton voting securities exceeded the $75.9 million threshold. Master Fund continued to purchase Halliburton voting securities until June 30, 2015, by which time Master Fund's aggregate value of Halliburton voting securities exceeded $1.4 billion.

44. Master Fund failed to file the required notification or to observe the required waiting period.

45. On or about January 27, 2016, Master Fund had sold a sufficient quantity of voting securities of Halliburton such that its holdings were no longer in excess of $76.3 million.

46. Master Fund was in violation of the requirements of the HSR Act related to its purchase of Halliburton voting securities each day beginning December 5, 2014, and ending on or about January 27, 2016.

B. Count 2: Co-Invest Fund's Acquisition of Halliburton

47. The HSR Act and applicable implementing regulations required that Co-Invest Fund file a notification and report form with the antitrust enforcement agencies and observe a waiting period before acquiring any voting securities in Halliburton that would result in Co-Invest Fund holding an aggregate total amount of voting securities in excess of the $50 million threshold, as adjusted ($76.3 million beginning in February 2016).

48. On or about February 24, 2015, Co-Invest Fund began purchasing Halliburton voting securities. On or about March 10, 2015, Co-Invest Fund's aggregate value of Halliburton voting securities exceeded the $76.3 million threshold. Co-Invest Fund continued to purchase Halliburton voting securities until March 12, 2015, by which time Co-Invest Fund's aggregate value of

Halliburton voting securities exceeded $138 million.

49. Co-Invest Fund failed to file the required notification or observe the required waiting period.

50. On or about January 22, 2016, Co-Invest Fund had sold a sufficient quantity of voting securities of Halliburton such that its holdings were no longer in excess of $76.3 million.

51. Co-Invest Fund was in violation of the requirements of the HSR Act related to its purchase of Halliburton voting securities each day beginning March 10, 2015, and ending on or about January 22, 2016.

C. Count 3: Master Fund's Acquisition of Baker Hughes

52. The HSR Act and applicable implementing regulations required that Master Fund file a notification and report form with the antitrust enforcement agencies and observe a waiting period before acquiring any voting securities in Baker Hughes that would result in Master Fund holding an aggregate total amount of voting securities in excess of the $50 million threshold, as adjusted ($75.9 million in December 2015, and $76.3 million beginning in February 2016).

53. On or about November 28, 2014, Master Fund began purchasing Baker Hughes voting securities. On or about December 1, 2014, Master Fund's aggregate value of Baker Hughes voting securities exceeded the $75.9 million threshold. Master Fund continued to purchase Baker Hughes voting securities until January 15, 2015, by which time Master Fund's aggregate value of Baker Hughes voting securities exceeded $1.2 billion.

54. Master Fund failed to file the required notification or to observe the required waiting period.

55. Master Fund was in violation of the requirements of the HSR Act related to its purchase of Baker Hughes voting securities each day beginning on December 1, 2014, and remains in violation of the HSR Act to the present.

VII. Request For Relief

Wherefore, Plaintiff requests:

(a) That the Court adjudge and decree that Defendant Master Fund's acquisitions of voting securities of Halliburton, without having filed a notification and report form and observing a waiting period, violated the HSR Act;

(b) That the Court adjudge and decree that Defendant Co-Invest Fund's acquisitions of voting securities of Halliburton, without having filed a notification and report form and observing a waiting period, violated the HSR Act;

(c) That the Court adjudge and decree that Defendant Master Fund's acquisitions of voting securities of Baker Hughes, without having filed a notification and report form and observing a waiting period, violated the HSR Act;

(d) That the Court order Defendants to pay to the United States an appropriate civil penalty as provided by the HSR Act, 15 U.S.C. § 18a(g)(1), the Debt Collection Improvement Act of 1996, Pub. L. 104–134, § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note), and Federal Trade Commission Rule 1.98, 16 CFR § 1.98, 74 Fed. Reg. 858 (Jan. 9, 2009);

(e) That the Court enjoin Defendants from any future violations of the HSR Act;

(f) That the Court order such other and further relief as the Court may deem just and proper; and,

(g) That the Court award the Plaintiff its costs of this suit.

Dated:

Respectfully submitted,

For the Plaintiff United States of America:

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/s/ ________________________
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/s/ ________________________
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United States District Court for the Northern District of California San Francisco Division

UNITED STATES OF AMERICA, Plaintiff, v. *VA Partners I, LLC, et al.,* Defendants.

Case No.: 16–cv–01672
Judge: William Alsup
Filed: 07/12/2016

COMPETITIVE IMPACT STATEMENT

The United States, pursuant to the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement to set forth the information necessary to enable the Court and the public to evaluate the proposed Final Judgment that would terminate this civil antitrust proceeding.

I. Nature and Purpose of this Proceeding

On April 4, 2016, the United States filed a Complaint against VA Partners I, LLC, ("VA Partners I"), ValueAct Capital Master Fund, L.P. ("Master Fund"), and ValueAct Co-Invest International, L.P. ("Co-Invest Fund") (collectively, "ValueAct" or "Defendants"), related to Master Fund's and Co-Invest Fund's acquisition of voting securities of Halliburton Co. ("Halliburton") and Baker Hughes Incorporated ("Baker Hughes") in 2014 and 2015.

The Complaint alleges that ValueAct violated Section 7A of the Clayton Act, 15 U.S.C. 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act"). The HSR Act states that "no person shall acquire, directly or indirectly, any voting securities of any person'' exceeding certain thresholds until that person has filed pre-acquisition notification and report forms with the Department of Justice and the Federal Trade Commission (collectively, the ''agencies'') and the post-filing waiting period has expired. *Id.* A key purpose of the notification and waiting period is to protect consumers and competition from potentially anticompetitive transactions by providing the agencies an opportunity to conduct an antitrust review of proposed transactions before they are consummated.

This case arises because ValueAct, an investment manager that is well known for actively involving itself in the management of the companies in which it invests, made substantial purchases of stock in two direct competitors with the intent to participate in those companies' business decisions, without complying with the notification and waiting period requirements of the HSR Act. Through these purchases, ValueAct simultaneously became one of the largest shareholders of both Halliburton and Baker Hughes. ValueAct established these positions as Halliburton and Baker Hughes—the second and third largest providers of oilfield services in the world—were being investigated for agreeing to a merger that threatened to substantially lessen competition in over twenty product markets in the United States. After the United States challenged that merger on April 6, 2016, Halliburton and Baker Hughes abandoned their anticompetitive plan to merge. ValueAct's failure to comply with the HSR Act prevented the agencies from reviewing ValueAct's acquisitions in advance, compromising the agencies' ability to protect competition and consumers.

The Complaint alleges that the Defendants could not rely on the HSR Act's limited exemption for acquisitions made ''solely for the purpose of investment'' (the ''investment-only exemption''). 15 U.S.C. 18a(c)(9) exempts ''acquisitions, solely for the purpose of investment, of voting securities, if, as a result of such acquisition, the securities acquired or held do not exceed 10 per centum of the outstanding voting securities of the issuer.'' Voting securities are held ''solely for the purpose of investment'' if the acquirer has ''no intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer.'' 16 CFR § 801.1(i)(1). As explained in the Complaint, ValueAct did not qualify for the investment-only exemption because it intended to participate in the business decisions of both companies.

The Complaint seeks a ruling that the Defendants' acquisitions of voting securities of Halliburton and Baker Hughes, without filing and observing the mandatory waiting period, violated the HSR Act. The Complaint asks the Court to issue an appropriate injunction and order the Defendants to pay an appropriate civil penalty to the United States.

On July 12, 2016, the United States filed a Stipulation and proposed Final Judgment that eliminates the need for a trial in this case. The proposed Final Judgment is designed to prevent and restrain Defendants' HSR Act violations. Under the proposed Final Judgment, which is explained more fully below, Defendants must pay a civil penalty of $11 million. Further, Defendants are prohibited from engaging in future conduct of the sort alleged in the Complaint.

The United States and the Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States first withdraws its consent. Entry of the proposed Final Judgment would terminate this case, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violations of the Antitrust Laws

A. The Defendants and the Acquisitions of Halliburton and Baker Hughes Voting Securities

Master Fund and Co-Invest Fund are offshore funds organized under the laws of the British Virgin Islands, with each having a principal place of business in San Francisco, California. VA Partners I is the general partner of the Defendant Funds. VA Partners I is a limited liability company organized under the laws of Delaware, with its principal place of business in San Francisco, California.

ValueAct is well known as an activist investor. ValueAct's website explains that it pursues a strategy of ''active, constructive involvement'' in the management of the companies in which it invests. The website further elaborates: ''[t]he goal in each investment is to work constructively with management and/or the company's board to implement a strategy or strategies that maximize returns for all shareholders.''

ValueAct entities have previously violated the HSR Act by acquiring voting securities without making the required notifications. In 2003, ValueAct Capital Partners, L.P. filed corrective notifications for three prior acquisitions of voting securities. ValueAct outlined steps it would take to ensure future compliance with the HSR Act. No enforcement action was taken at that time. Master Fund then failed to make required filings with respect to three acquisitions that it made in 2005. ValueAct Capital Partners, L.P. agreed to pay a $1.1 million civil penalty to settle an HSR Act enforcement action based on these violations.

B. The Defendants' Unlawful Conduct

The Complaint in this case alleges that ValueAct violated the HSR Act in connection with acquisitions of voting securities of Halliburton and Baker Hughes in 2014 and 2015. In making these acquisitions, ValueAct improperly relied on the limited investment-only exemption from HSR filing requirements despite the fact that ValueAct intended from the outset to play an ''active role'' at both Halliburton and Baker Hughes. ValueAct's failure to file the necessary notifications prevented the Department from timely reviewing ValueAct's stock acquisitions, which risked harming competition given that they resulted in ValueAct's becoming one of the largest shareholders in two direct competitors that were pursuing an anticompetitive merger.

The Complaint alleges that ValueAct committed three distinct violations of the HSR Act. First, Defendant Master Fund acquired voting securities of Halliburton in excess of the HSR Act's thresholds without complying with the notification and waiting period requirements. Second, Defendant Co-Invest Fund acquired voting securities of Halliburton in excess of the HSR Act's thresholds without complying with the notification and waiting period requirements. Third, Defendant Master Fund acquired voting securities of Baker Hughes in excess of the HSR Act's thresholds without complying with the notification and waiting period requirements.

As described in more detail in the Complaint, ValueAct intended from the time it made these stock purchases to use its position as a major shareholder of both Halliburton and Baker Hughes to obtain access to management, to learn information about the companies and the merger in private conversations with senior executives, to influence those executives to improve the chances that the Halliburton-Baker Hughes merger would be completed, and ultimately influence other business decisions regardless of whether the merger was consummated. ValueAct executives met frequently with the top executives of the companies (both in person and by teleconference), and sent numerous emails to these the top executives on a variety of business issues. During these meetings, ValueAct identified specific business areas for improvement. ValueAct also made presentations to each company's senior executives, including presentations on post-merger integration. The totality of the evidence described in the Complaint makes clear that ValueAct could not claim the limited HSR exemption for passive investment.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment contains injunctive relief and requires payment of civil penalties, which are designed to prevent future violations of the HSR Act. The proposed Final Judgment sets forth prohibited conduct, and provides access and inspection procedures to enable the United States to determine and ensure compliance with the proposed Final Judgment.

A. Prohibited Conduct

Section IV of the proposed Final Judgment is designed to prevent future HSR violations of the sort alleged in the Complaint. Under this provision, the Defendants may not rely on the HSR Act's investment-only exemption if they intend to take, or their investment strategy identifies circumstances in which they may take, the following actions: (1) proposing a merger, acquisition, or sale to which the issuer of the acquired voting securities is a party; (2) proposing to another person in which the Defendant has an ownership stake the potential terms for a merger, acquisition, or sale between the person and the issuer; (3) proposing new or modified terms for a merger or acquisition to which the issuer is a party; (4) proposing an alternative to a merger or acquisition to which the issuer is a party, either before consummation or upon abandonment; (5) proposing changes to the issuer's corporate structure that require shareholder approval; or (6) proposing changes to the issuer's strategies regarding pricing, production capacity, or production output of the issuer's products and services.

The HSR Act exempts acquisitions made "*solely* for the purpose of investment." 15 U.S.C. 18a(c)(9) (emphasis added). As explained in the regulations implementing the HSR Act, an acquirer must have "*no intention* of participating in the formulation, determination, or direction of the basic business decisions of the issuer" to qualify for the investment-only exemption. 16 CFR § 801.1(i)(1) (emphasis added).

ValueAct did not have a passive intent when it acquired stock in Halliburton and Baker Hughes. The proposed merger of these competitors was central to ValueAct's investment strategy. As described in the Complaint, ValueAct intended from the outset to use its ownership stake in each firm to influence the firm's management, as necessary, to increase the probability of the merger being consummated or propose alternatives if it could not be completed. An investor who is considering influencing basic business decisions—such as merger and acquisition strategy, corporate restructuring, and other competitively significant business strategies (*e.g.*, relating to price, production capacity, or production output)—is not passive. Therefore, ValueAct was not entitled to rely on the investment-only exemption.

The prohibited conduct provision of the proposed Final Judgment is aimed at deterring future HSR violations of the sort alleged in the Complaint, in particular, those that pose the greatest threat to competition. This provision does not represent a comprehensive list of all conduct that would disqualify an acquirer of voting securities from relying on the investment-only exemption of the HSR Act. Other actions, including but not limited to those described in the Statement of Basis and Purpose accompanying the HSR Rules to implement the Act, may disqualify an acquirer from relying on the investment-only exemption. Premerger Notification: Reporting and Waiting Period Requirements, 43 Fed. Reg. 33,450, 34,465 (July 31, 1978) (identifying conduct that may be inconsistent with the investment-only exemption).

In light of ValueAct's conduct at issue in this case and its past violations, this injunction is an appropriate means to ensure that ValueAct is deterred from violating the HSR Act again. If ValueAct does violate any of the provisions of the proposed Final Judgment, the Court may impose additional sanctions for contempt, if appropriate.

B. Compliance

Section V of the proposed Final Judgment sets forth required compliance procedures. Section V requires the Defendants to designate a compliance officer, who is required to distribute a copy of the Final Judgment to each person who has responsibility for, or authority over, each Defendant's acquisitions of voting securities. The compliance officer is also required to obtain a certification form from each such person verifying that he or she has received a copy of the Final Judgment and understands his or her obligations.

To help ensure that the Defendants comply with the Final Judgment, Section VI grants duly authorized representatives of the United States Department of Justice ("DOJ") access, upon reasonable notice, to each Defendant's records and documents relating to matters contained in the Final Judgment. The Defendants must also make their personnel available for interviews or depositions regarding such matters. In addition, the Defendants must, upon written request from duly authorized representatives of the Assistant Attorney General in charge of the DOJ's Antitrust Division, submit written reports relating to matters contained in the Final Judgment.

C. Civil Penalties

The HSR Act currently provides a maximum civil penalty of $16,000 per day for each day a defendant is in violation of the Act. This maximum penalty will be adjusted to $40,000 per day as of August 1, 2016, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74 § 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 CFR 1.98, 81 Fed. Reg. 42,476 (June 30, 2016). The proposed Final Judgment imposes an $11 million civil penalty for the Defendants' failure to comply with the notice and waiting requirements of the HSR Act.

The Department considered several factors in assessing what penalty would be appropriate in this case. First, the facts as described in the Complaint make clear that ValueAct intended to take an active role in the business decisions of both Halliburton and Baker Hughes, and ValueAct should have recognized its filing obligation. To the extent that ValueAct had any doubt about its obligations, it could have sought the advice of the Federal Trade Commission's Premerger Notification Office, but did not do so. Second, as discussed above, ValueAct has previously violated the HSR Act six times. Finally, although the HSR Act is a strict liability statute, the Department considers it an aggravating factor that the transactions at issue raised substantive competitive concerns. ValueAct became one of the largest shareholders of two direct competitors, and proceeded to actively and simultaneously participate in the management of each company. Moreover, ValueAct established these positions as Halliburton and Baker Hughes were being investigated for agreeing to a merger that threatened to substantially lessen competition in over twenty product markets in the United States, and planned to intervene to influence the probability that the merger would be completed or to determine the companies' courses if it was not. As a result, the violations prejudiced the Department's ability to enforce the antitrust laws.

Together, these factors call for a substantial penalty. However, the Department did adjust the penalty downward from the maximum because the Defendants are willing to resolve the matter by consent decree and avoid prolonged litigation. Despite the downward adjustment, the penalty in this case will be the largest penalty ever imposed for a violation of the HSR Act. Such a penalty appropriately reflects the gravity of the conduct at issue, and will deter ValueAct and other companies from violating the HSR Act.

IV. Remedies Available to Potential Private Litigants

There is no private antitrust action for HSR Act violations; therefore, entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust action.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendant have stipulated that the proposed Final Judgment may be entered by this Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon this Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the *Federal Register*, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the *Federal Register*. Written comments should be submitted to:

Kathleen S. O'Neill
Chief, Transportation, Energy and
Agriculture Section
Antitrust Division
United States Department of Justice
450 Fifth Street, NW, Suite 8000
Washington, DC 20530
Email: *kathleen.oneill@usdoj.gov*

The proposed Final Judgment provides that this Court retains jurisdiction over this action, and the parties may apply to this Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

As an alternative to the proposed Final Judgment, the United States considered pursuing a full trial on the merits against the Defendants. The United States is satisfied, however, that the proposed relief is an appropriate remedy in this matter. Given the facts of this case, the United States is satisfied that the injunction coupled with the proposed civil penalty is sufficient to address the violations alleged in the Complaint and to deter violations by similarly situated entities in the future, without the time, expense, and uncertainty of a full trial on the merits.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that remedies contained in proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment is "in the public interest." 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one, as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1, 10–11 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *U.S. Airways Group, Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (noting the court has broad discretion of the adequacy of the relief at issue); *United States* v. *InBev N.V./S.A.*, No. 08–1965 (JR), 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable").[1]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not "'engage in an unrestricted evaluation of what relief would best serve the public.'" *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.*,

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[1] The 2004 amendments substituted "shall" for "may" when setting forth the relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is *"within the reaches of the public interest."* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2] In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft,* 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983)); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (noting that room must be made for the government to grant concessions in the negotiation process for settlements (citing *Microsoft,* 56 F.3d at 1461)); *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (stating that "the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As the United States District Court for the District of Columbia recently confirmed in *SBC Communications,* courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3] A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways,* 38 F. Supp. 3d at 76.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Date: July 12, 2016

Respectfully Submitted,

/s/ Kathleen S. O'Neill

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[2] *Cf. BNS,* 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' ").

[3] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States* v. *Mid-Am. Dairymen, Inc.,* No. 73–CV–681–W–1, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93–298, at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

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Attorneys for Plaintiff United States of America

United States District Court for the Northern District of California San Francisco Division

United States of America, Plaintiff, v. *VA Partners I, LLC, et al.,* Defendants.

Case No.: 16–cv–01672
Judge: William Alsup
Filed: 07/12/2016

[PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiff, the United States of America (''United States'') filed its Complaint on April 4, 2016, alleging that VA Partners I, LLC, ValueAct Capital Master Fund, L.P., and ValueAct Co-Invest International, L.P. (collectively, ''ValueAct'' or ''Defendants'') violated Section 7A of the Clayton Act, 15 U.S.C. § 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the ''HSR Act''), and Plaintiff and Defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against, or an admission by, the Defendants with respect to any such issue of fact or law;

AND WHEREAS Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

NOW, THEREFORE, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby ORDERED, ADJUDGED, AND DECREED:

I. Jurisdiction

The Court has jurisdiction over the subject matter of this action. The Defendants consent solely for the purpose of this action and the entry of this Final Judgment that this Court has jurisdiction over each of the parties to this action and that the Complaint states a claim upon which relief can be granted against the Defendants under Section 7A of the Clayton Act, 15 U.S.C. § 18a.

II. Definitions

As used in this Final Judgment:

(A) ''Covered Acquisition'' means an acquisition of Voting Securities of an Issuer that is subject to the reporting and waiting requirements of the HSR Act, 15 U.S.C. § 18a, and that is not otherwise exempt from the requirements of the HSR Act, but for which Defendant have not reported under the HSR Act, in reliance on the exemption pursuant to Section (c)(9) of the HSR Act, 15 U.S.C. § 18a(c)(9).

(B) ''Issuer'' means a legal entity that issues Voting Securities.

(C) ''Officer or Director'' means (1) the members of the Issuer's board of directors; (2) those persons whose positions are designated by the bylaws or articles of incorporation of the Issuer, its parent, or any subsidiary of the Issuer; or (3) those persons whose positions are appointed by the board of the Issuer, its parent, or any subsidiary of the Issuer. If there are no persons who meet the criteria listed above, ''Officer or Director'' means those individuals whose capacities and duties are similar to the officers or directors of a corporation, including deciding whether to make the acquisition or sale of a business. Notwithstanding the foregoing, Officer or Director shall not include any persons whose job responsibilities primarily relate to investor relations.

(D) The terms ''Person(s)'' and ''Voting Securities'' have the meanings as defined in the HSR Act and Regulations promulgated thereunder, 16 CFR §§ 801–803.

(E) ''Propose'' means communicating a plan of action for consideration, discussion or adoption.

(F) ''ValueAct Partners I, LLC'' means Defendant ValueAct Partners I, LLC, a limited liability company and general partner of Defendants ValueAct Master Capital Fund, L.P. and ValueAct Co-Invest International, L.P., organized under the laws of Delaware, with its principal place of business at One Letterman Drive, San Francisco, CA 94129.

(G) ''ValueAct Master Capital Fund, L.P.'' means Defendant ValueAct Master Capital Fund, L.P., an offshore fund organized under the laws of the British Virgin Islands, with its principal place of business at One Letterman Drive, San Francisco, CA 94129.

(H) ''ValueAct Co-Invest International, L.P.'' means Defendant ValueAct Co-Invest International, L.P., an offshore fund organized under the laws of the British Virgin Islands, with its principal place of business at One Letterman Drive, San Francisco, CA 94129.

III. Applicability

This Final Judgment applies to all Defendants, including each of their directors, officers, general partners, managers, agents, parents, subsidiaries, successors, and assigns, all in their capacities as such, and to all other Persons and entities that are in active concert or participation with any of the foregoing with respect to conduct prohibited in Section IV when the relevant Persons or entities have received actual notice of this Final Judgment by personal service or otherwise.

IV. Prohibited Conduct

Each Defendant is enjoined from making a Covered Acquisition, without filing and observing the waiting period as required by the HSR Act, 15 U.S.C. § 18a, if at the time of such Covered Acquisition (i) the Defendant intends to take any of the below actions, or (ii) the Defendant's investment strategy specific to such Covered Acquisition identifies circumstances in which the Defendant may take any of the below actions:

(A) Propose to an Officer or Director of the Issuer that the Issuer merge with, acquire, or sell itself to another Person;

(B) Propose to an Officer or Director of any other Person in which the Defendant owns Voting Securities or an equity interest the potential terms on which that Person might merge with, acquire, or sell itself to the Issuer;

(C) Propose to an Officer or Director of the Issuer new or modified terms for any publicly announced merger or acquisition to which the Issuer is a party;

(D) Propose to an Officer or Director of the Issuer an alternative to a publicly announced merger or acquisition to which the Issuer is a party, either before consummation of the publicly announced merger or acquisition or upon its abandonment;

(E) Propose to an Officer or Director of the Issuer changes to the Issuer's corporate structure that require shareholder approval; or,

(F) Propose to an Officer or Director of the Issuer changes to the Issuer's strategies regarding the pricing of the Issuer's product(s) or service(s), its production capacity, or its production output.

V. Compliance

(A) Defendants shall maintain a compliance program that shall include designating, within thirty (30) days of the entry of this Final Judgment, a Compliance Officer with responsibility for achieving compliance with this Final Judgment. The Compliance Officer shall, on a continuing basis, supervise the review of current and proposed activities to ensure compliance with this Final Judgment. The Compliance Officer shall be responsible for accomplishing the following activities:

(1) Distributing, within thirty (30) days of the entry of this Final Judgment, a copy of this Final Judgment to any Person who has responsibility for or authority over acquisitions by Defendants of Voting Securities;

(2) Distributing, within thirty (30) days of succession, a copy of this Final Judgment to any Person who succeeds to a position described in Section V.A.1; and

(3) Obtaining within sixty (60) days from the entry of this Final Judgment, and once within each calendar year after the year in which this Final Judgment is entered during the term of this Final Judgment, and retaining for the term of this Final Judgment, a written certification from each Person designated in Sections V.A.1 and V.A.2 that he or she: (a) has received, read, understands, and agrees to abide by the terms of this Final Judgment; (b) understands that failure to comply with this Final Judgment may result in conviction for criminal contempt of court; and (c) is not aware of any violation of the Final Judgment.

(B) Within sixty (60) days of the entry of this Final Judgment, Defendants shall certify to Plaintiff that they have (1) designated a Compliance Officer, specifying his or her name, business address and telephone number; and (2) distributed the Final Judgment in accordance with Section V.A.1.

(C) If any of Defendants' directors or officers or the Compliance Officer learns of any violation of this Final Judgment, Defendants shall within ten (10) business days make a corrective filing under the HSR Act.

VI. Plaintiff's Access and Inspection

(A) For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, duly authorized representatives of the United States Department of Justice shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) Access during Defendants' office hours to inspect and copy, or at Plaintiff's option, to require Defendants to provide copies of all records and documents in their possession or control relating to any matters contained in this Final Judgment; and

(2) To interview, informally or on the record, Defendants' directors, officers, employees, agents or other Persons, who may have their individual counsel present, relating to any matters contained in this Final Judgment. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

(B) Upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

(C) No information or documents obtained by the means provided in this Final Judgment shall be divulged by the Plaintiff to any person other than an authorized representative of the executive branch of the United States or of the Federal Trade Commission, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If, at the time information or documents are furnished by Defendants to Plaintiff, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1) of the Federal Rules of Civil Procedure," then the United States shall give ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Defendants are not a party.

VII. Civil Penalty

Judgment is hereby entered in this matter in favor of Plaintiff United States of America and against Defendants, and, pursuant to Section 7A(g)(1) of the Clayton Act, 15 U.S.C. § 18a(g)(1), the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114–74 § 701 (amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 CFR 1.98, 81 FR 42,476 (June 30, 2016), Defendants are hereby ordered to pay a civil penalty in the amount of eleven million dollars ($11,000,000). Payment of the civil penalty ordered hereby shall be made by wire transfer of funds or cashier's check. If the payment is made by wire transfer, Defendants shall contact Janie Ingalls of the Antitrust Division's Antitrust Documents Group at (202) 514–2481 for instructions before making the transfer. If the payment is made by cashier's check, the check shall be made payable to the United States Department of Justice and delivered to:

Janie Ingalls
United States Department of Justice
Antitrust Division, Antitrust Documents Group
450 5th Street, NW, Suite 1024
Washington, DC 20530

Defendants shall pay the full amount of the civil penalties within thirty (30) days of entry of this Final Judgment. In the event of a default in payment, interest at the rate of eighteen (18) percent per annum shall accrue thereon from the date of default to the date of payment.

VIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish any violations of its provisions.

IX. Expiration of Final Judgment

This Final Judgment shall expire ten (10) years from the date of its entry.

X. Costs

Each party shall bear its own costs.

XI. Public Interest Determination

The entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

DATED: __________________

Court approval subject to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

____

Hon. William Alsup,
United States District Judge.

[FR Doc. 2016–17432 Filed 7–22–16; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—OpenDaylight Project, Inc.

Notice is hereby given that, on June 27, 2016 pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), OpenDaylight Project, Inc. ("OpenDaylight") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Serro, LLC, Santa Clara, CA, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OpenDaylight intends to file additional written notifications disclosing all changes in membership.

On May 23, 2013, OpenDaylight filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 1, 2013 (78 FR 39326).

The last notification was filed with the Department on April 4, 2016. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 3, 2016 (81 FR 26582).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–17433 Filed 7–22–16; 8:45 am]

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DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act and the Oil Pollution Act

On July 20, 2016, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Western District of Michigan in the lawsuit entitled *United States* v. *Enbridge Energy, Limited Partnership, et al.*, Civil Action No. 1:16–cv–914.

The Complaint in this action asserts claims against Enbridge Energy, Limited Partnership and eight related Enbridge entities ("Enbridge") arising from two separate oil transmission pipeline failures that resulted in discharges of oil to waters of the United States and adjoining shorelines. One of these pipeline failures occurred on July 25, 2010, near Marshall, Michigan on a pipeline known as Line 6B, and resulted in discharges of oil to Talmadge Creek, a large stretch the Kalamazoo River, and their adjoining shorelines. The other pipeline failure occurred on or about September 9, 2010, in Romeoville, Illinois on a pipeline known as Line 6A, and resulted in discharges of oil primarily to an unnamed tributary to the Des Plaines River, a retention pond, and their adjoining shorelines. The Complaint seeks injunctive relief and civil penalties under Sections 309 and 311 of the Clean Water Act, as amended, 33 U.S.C. 1319 and 1321, for both the Marshall, Michigan and the Romeoville, Illinois oil spills. In addition, under Section 1002 of the Oil Pollution Act, as amended, 33 U.S.C. 2702, the Complaint seeks to recover from Enbridge all unreimbursed removal costs incurred and to be incurred by the United States in connection with the Marshall, Michigan oil spill.

Under the proposed Consent Decree, Enbridge will pay a civil penalty of $61 million for the Marshall, Michigan oil spill, and an additional $1 million for the Romeoville, Illinois oil spill. In addition, Enbridge will pay over $5.4 million in unreimbursed federal removal costs that the Oil Spill Liability Trust Fund ("Fund") paid in connection with the Marshall, Michigan oil spill through October 1, 2015, and Enbridge will pay all additional removal costs consistent with the National Contingency Plan that are paid by the Fund after October 1, 2015, in connection with the Marshall, Michigan oil spill. Prior to the Consent Decree, the United States billed Enbridge for additional federal removal costs incurred in connection with both the Marshall, Michigan oil spill and the Romeoville, Illinois oil spill, and Enbridge paid all such amounts billed. Finally, the proposed Consent Decree includes an extensive program of injunctive relief, including a series of measures designed to (1) reduce the potential for future pipeline failures that could result in unlawful discharges from Enbridge's Lakehead System pipelines, (2) improve leak detection capabilities and Enbridge's response to situations that could indicate potential pipeline failures, and (3) improve Enbridge's emergency response and preparedness capabilities to better address any future spills that might occur.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Enbridge Energy, Limited Partnership, et al.*, D.J. Ref. No. 90–5–1–1–10099. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

You may request a paper copy of the Consent Decree with or without Appendices. If requesting a copy of the proposed Consent Decree with Appendices, please enclose a check or money order for $52.25 (25 cents per page reproduction cost) payable to the United States Treasury. If requesting a copy of the proposed Consent Decree without Appendices, please enclose a check or money order for $42.25 payable to the United States Treasury.

Randall M. Stone,

Acting Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–17492 Filed 7–22–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[Docket No. OLP 159]

Notice of Public Comment Period on Proposed Uniform Language for Testimony and Reports

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: This notice announces the opening of the public comment period on the Proposed Uniform Language for Testimony and Reports (Proposed Uniform Language) documents for the forensic disciplines of anthropology, explosive chemistry, explosive devices, geology, hair, handwriting analysis, metallurgy, mitochondrial DNA and Y chromosome typing, and paints and polymers.

DATES: Written public comment regarding the Proposed Uniform Language should be submitted through *www.regulations.gov* before August 26, 2016.

FOR FURTHER INFORMATION CONTACT: The Office of Legal Policy, 950 Pennsylvania Avenue NW., Washington, DC 20530, by phone at 202–514–4601 or via email at *ULTR.OLP@usdoj.gov.*

SUPPLEMENTARY INFORMATION: As part of the Department's continued efforts to advance the practice of forensic science by ensuring Department forensic examiners are testifying and reporting consistent with applicable scientific standards and across Department components including the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the Drug Enforcement Administration (DEA), and the Federal Bureau of Investigation (FBI), the Department is developing Proposed Uniform Language that would apply to all Department forensic laboratory personnel. The Proposed Uniform Language documents are based on the Federal Bureau of Investigation's (FBI) Approved Scientific Standards for Testimony and Reports (ASSTRs) but differ substantially. As a primary matter, the ASSTRs are currently in effect for FBI personnel, while the Proposed Uniform Language documents are merely proposed and have not been adopted. After adjudication of public comment and the incorporation of appropriate edits, it is anticipated that each Proposed Uniform Language document will be forwarded to the Deputy Attorney General. If one or more are adopted by the Deputy Attorney General, they would become effective for Department forensic laboratory personnel.

Process: On June 10, 2016, the Department posted Proposed Uniform Language documents for fiber, footwear and tire treads, general chemistry, glass, latent prints, serology, and toxicology. At that time, the Department stated its intention to publish all remaining Proposed Uniform Language documents in July 2016. Documents for two disciplines (nuclear DNA and firearms and toolmarks) are not ready to be posted at this time but rather than delaying the process, those documents will be posted for public comment separately.

Ongoing Review of Previously Received Comments: The Department received 127 comments on the Proposed Uniform Language documents for fiber, footwear and tire treads, general chemistry, glass, latent prints, serology, and toxicology. Comment was open through July 8, 2016. Due to the substantive nature of the comments and the recency of the closing of the comment period, the Department's adjudication process is ongoing. While several comments suggested changes to the format and content of the Proposed Uniform Language documents, the Department has not decided whether, or to what extent, to make changes in light of those comments, nor have changes been incorporated into Proposed Uniform Language documents for anthropology, explosive chemistry, explosive devices, geology, hair, handwriting, metallurgy, mitochondrial DNA and Y chromosome typing, and paints and polymers. Previously received comments are being reviewed and, if adopted, will be reflected in all relevant Uniform Language documents. As a result, commenters do not need to submit identical or substantially identical comments on this group of Proposed Uniform Language documents; commenters may wish to make their comments more discipline-specific for this group.

Proposed Uniform Language: The Department is posting the Proposed Uniform Language document for each of the following forensic science disciplines on *www.regulations.gov* and seeking public comment: anthropology, explosive chemistry, explosive devices, geology, hair, handwriting, metallurgy, mitochondrial DNA and Y chromosome typing, and paints and polymers. Each Proposed Uniform Language document contains two primary sections: statements approved for use in examination testimony and/or laboratory reports and statements not approved for use in examination testimony and/or laboratory reports. We ask that you review and provide comment on each Proposed Uniform Language document separately.

Review Sheet: In order to assist commenters in evaluating each Proposed Uniform Language document, the Department has provided a review sheet that identifies certain criteria. Commenters may find it helpful to use a format similar to that provided by the review sheet to frame their responses. Use of the review sheet is optional but would be helpful to provide consistency in commentary.

Supporting Documentation: Each Proposed Uniform Language document is accompanied by supporting documentation (posted separately) that provides additional scientific background and policy considerations to support the statements approved for use and statements not approved in examination testimony and/or laboratory reports. The Department is not seeking public comment on the supporting documentation, however, commenters are welcome to provide thoughts and suggestions on these documents but notes that only each Proposed Uniform Language document will be forwarded to the Deputy Attorney General for review and potential adoption by Department personnel.

Posting of Public Comments: To ensure proper handling of comments, please reference "Docket No. OLP 159" on all electronic and written correspondence. The Department encourages all comments on this framework be submitted electronically through *www.regulations.gov.* Paper comments that duplicate the electronic submission are not necessary as all comments submitted to *www.regulations.gov* will be posted for public review and are part of the official docket record.

In accordance with the Federal Records Act, please note that all comments received are considered part of the public record, and shall be made available for public inspection online at *www.regulations.gov.* The comments to be posted may include personally identifiable information (such as your name, address, etc.) and confidential business information voluntarily submitted by the commenter.

The Department will post all comments received on *www.regulations.gov* without making any changes to the comments or redacting any information, including any personally identifiable information provided. It is the responsibility of the commenter to safeguard personally identifiable information. You are not required to submit personally identifying information in order to comment on the Proposed Uniform Language and the Department recommends that commenters not include personally identifiable information such as Social Security Numbers, personal addresses, telephone numbers, and email addresses that they do not want made public in their comments as such submitted information will be available to the public via *www.regulations.gov.* Comments submitted through *www.regulations.gov* will not include the email address of the commenter unless the commenter chooses to include that information as part of his or her comment.

Dated: July 20, 2016.

Kira Antell,

Senior Counsel, Office of Legal Policy.

[FR Doc. 2016–17551 Filed 7–22–16; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2016–043]

Advisory Committee on Presidential Library-Foundation Partnerships

AGENCY: National Archives and Records Administration (NARA).

ACTION: Charter Renewal of the Advisory Committee on Presidential Library-Foundation Partnerships.

SUMMARY: In accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), the National Archives and Records Administration (NARA) is renewing the Advisory Committee on Presidential Library-Foundation Partnerships, a federal advisory committee that advises the Archivist of the United States on matters relating to the public-private partnership of the Presidential Libraries operated by NARA.

DATES: The charter renewal was effective on July 16, 2016 and remains in effect for two years from that date.

ADDRESSES: Please submit any questions on this notice by email to *regulation_comments@nara.gov,* by phone to 301.837.3151, or by mail to National Archives and Records Administration; Regulation Comments Desk, Suite 4100; College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Denise LeBeck by phone at 301–837–1724, by email at *denise.lebeck@nara.gov,* or by mail at National Archives and Records Administration; Office of Presidential Libraries; 8601 Adelphi Road; College Park, MD 20740–6001.

Dated: July 20, 2016.

Patrice Little Murray,

Committee Management Officer.

[FR Doc. 2016–17460 Filed 7–22–16; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0001]

Sunshine Act Meeting

DATE: July 25, August 1, 8, 15, 22, 29, 2016.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of July 25, 2016

Tuesday, July 26, 2016

9:00 a.m. Meeting with NRC Stakeholders (Public Meeting) (Contact: Denise McGovern: 301–415–0681)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, July 28, 2016

9:00 a.m. Hearing on Combined Licenses for Levy Nuclear Plant, Units 1 and 2: Section 189a. of the Atomic Energy Act Proceeding (Public Meeting) (Contact: Donald Habib: 301–415–1035)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of August 1, 2016—Tentative

There are no meetings scheduled for the week of August 1, 2016.

Week of August 8, 2016—Tentative

There are no meetings scheduled for the week of August 8, 2016.

Week of August 15, 2016—Tentative

There are no meetings scheduled for the week of August 15, 2016.

Week of August 22, 2016—Tentative

There are no meetings scheduled for the week of August 22, 2016.

Week of August 29, 2016—Tentative

There are no meetings scheduled for the week of August 29, 2016.

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The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: July 20, 2016.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2016–17619 Filed 7–21–16; 4:15 pm]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine (1) the practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

Title and purpose of information collection: Repayment of Debt; OMB 3220–0169.

When the Railroad Retirement Board (RRB) determines that an overpayment of Railroad Retirement Act or Railroad Unemployment Insurance Act benefits has occurred, it initiates prompt action to notify the annuitant of the overpayment and to recover the money owed the RRB. To effect payment of a debt by credit card, the RRB utilizes Form G–421F, Repayment by Credit Card. The RRB's procedures pertaining to benefit overpayment determinations and the recovery of such benefits are prescribed in 20 CFR 255 and 340.

One form is completed by each respondent. Completion is voluntary.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (81 FR 28907 on May 10, 2016) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Repayment of Debt.

OMB Control Number: 3220–0169.

Form(s) submitted: G–421F.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or Households.

Abstract: When the RRB determines that an overpayment of benefits under the Railroad Retirement Act or Railroad Unemployment Insurance Act has occurred, it initiates action to notify the claimant of the overpayment and to recover the amount owed. The collection obtains information needed to allow for repayment by the claimant by credit card, in addition to the customary form of payment by check or money order.

Changes proposed: The RRB proposes no changes to Form G–421F.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–421F	535	5	45
Total	535		45

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV.*

Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Charles.Mierzwa@RRB.GOV* and to the OMB Desk Officer for the RRB, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

Charles Mierzwa,

Chief of Information Resources Management.

[FR Doc. 2016–17475 Filed 7–22–16; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78359; File No. SR–FINRA–2016–027]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Relating to the Reporting of U.S. Treasury Securities to the Trade Reporting and Compliance Engine

July 19, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 18, 2016, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to expand the Trade Reporting and Compliance Engine ("TRACE") reporting rules to include most secondary market transactions in marketable U.S. Treasury securities.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

(i) Background

The market in U.S. Treasury securities—or "Treasuries"[3]—is the deepest and most liquid government securities market in the world.[4] Treasuries are traded by broker-dealers as well as commercial bank dealers and principal trading firms ("PTFs") that are not registered as broker-dealers with the SEC or members of FINRA. There is not currently a complete public repository or audit trail for information on transactions in Treasuries.[5]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] When used throughout this filing, the term "Treasuries" includes all debt securities issued by the U.S. Department of the Treasury, and the term "U.S. Treasury Securities" reflects the definition of that term in the TRACE Rules, which comprises a narrower group of Treasuries. *See* Rule 6710(p). The term "Treasuries" does not include Treasury futures, and as discussed below, the proposed rule change would not apply to transactions in Treasury futures.

[4] Treasuries—such as bills, notes, and bonds—are debt obligations of the U.S. government. Because these debt obligations are backed by the "full faith and credit" of the government, and thus by its ability to raise tax revenues and print currency, Treasuries are generally considered the safest of all investments. As of April 30, 2016, there was approximately $13.4 trillion outstanding of interest-bearing marketable U.S. Treasury debt. *See* U.S. Department of the Treasury, Bureau of the Fiscal Service, *Monthly Statement of the Public Debt,* April 30, 2016, *available at http://www.treasurydirect.gov/govt/reports/pd/mspd/2016/opds042016.prn.* According to data compiled by the Securities Industry and Financial Markets Association ("SIFMA"), average daily trading volumes by primary dealers in June 2016 was estimated at slightly over $512.5 billion. *See U.S. Treasury Trading Volume, available at http://www.sifma.org/research/statistics.aspx.*

On October 15, 2014, the market for Treasuries (as well as for Treasury futures and other closely-related financial markets) experienced an unusually high level of volatility and a rapid round-trip in prices. In response to the unexplained volatility, an existing interagency working group (''IAWG'') led by the U.S. Department of the Treasury (''Treasury Dept.'') analyzed both the conditions that contributed to the events of October 15 and the structure of the U.S. Treasury market more generally.[6] A detailed joint staff report (''JSR''), was issued on July 13, 2015, that included a set of preliminary findings on the October 15 volatility, described the current state of the U.S. Treasury market, and proposed a series of four ''next steps'' in understanding the evolution of the U.S. Treasury market.[7] Included among these ''next steps'' was an assessment of the data available to regulators and to the public regarding the cash market for Treasuries.[8]

Following publication of the JSR, on January 19, 2016, the Treasury Dept. published a Request for Information (''RFI'') seeking public comment on structural changes in the U.S. Treasury market and their implications for market functioning.[9] One of the RFI's stated intents was to develop a holistic view of trading and risk management practices in the U.S. Treasury market, particularly in light of the evolution of the market resulting from technological advances over the past two decades, including the associated growth of high-speed electronic trading. The RFI noted that, given this evolution, ''access to timely and comprehensive data across related markets is increasingly important,'' and the Treasury Dept. is therefore ''interested in the most efficient and effective ways for the official sector to obtain additional market data and in ways to more effectively monitor diverse but related markets.''[10] The RFI stated that the Treasury Dept. was also interested in ''the potential benefits and costs of additional transparency with respect to Treasury market trading activity and trading venue policies and practices.''[11]

The RFI included four sections, each of which expanded upon one of the four ''next steps'' identified in the JSR, and each section included numerous questions for public consideration, ranging from broad high-level questions to detailed and specific questions on discrete issues. Section I requested comment on the evolution of the U.S. Treasury market, the primary drivers of that evolution, and implications for market functioning and liquidity. Section II asked for information on risk management practices and market conduct across the U.S. Treasury market and on implications for operational risks and risks to market functioning and integrity. Section III requested comment on official sector access to data regarding the cash market for Treasuries. Section IV focused on whether dissemination of U.S. Treasury market transaction data to the public would be beneficial.

The comment period on the RFI closed on April 22, 2016, and 52 comment letters were submitted. As discussed below, approximately 30 of the letters addressed reporting to the official sector or public dissemination. Following receipt and review of the comment letters, on May 16, 2016, the Treasury Dept. and the SEC announced that ''they are working together to explore efficient and effective means of collecting U.S. Treasury cash market transaction information[, and that as] part of those efforts, the agencies are requesting that [FINRA] consider a proposal to require its member brokers and dealers to report Treasury cash market transactions to a centralized repository.''[12] The Treasury Dept. noted that it ''will continue working with other agencies and authorities to develop a plan for collecting similar data from institutions who actively trade U.S. Treasury securities but are not FINRA members.'' The proposed rule change is FINRA's proposal to require reporting by its members of transactions in U.S. Treasury Securities.

(ii) Proposed Rule Change

As described below, the proposed rule change would require all FINRA members involved in transactions in U.S. Treasury Securities, as defined in the TRACE rules, to report most transactions in those securities to TRACE.

(A) Scope of Securities

The TRACE reporting rules apply to ''Reportable TRACE Transactions,'' as defined in Rule 6710(c), involving ''TRACE-Eligible Securities,'' as defined in Rule 6710(a). Any ''U.S. Treasury Security,'' as defined in Rule 6710(p), is currently excluded from the definition of TRACE-Eligible Security; consequently, no trading activity by FINRA members in U.S. Treasury Securities is required to be reported to TRACE. Rule 6710(p) defines ''U.S. Treasury Security'' as ''a security issued by the U.S. Department of the Treasury to fund the operations of the federal government or to retire such outstanding securities.''

FINRA is proposing to amend the TRACE rules to require the reporting of transactions in all Treasuries with the exception of savings bonds.[13] To effectuate this requirement, the proposed rule change amends the definition of ''TRACE-Eligible Security'' to include U.S. Treasury Securities and amends the definition of ''U.S. Treasury Security'' to exclude savings bonds. The term ''U.S. Treasury Securities'' will therefore include all marketable Treasuries, including Treasury bills, notes, and bonds, as well as separate principal and interest components of a U.S. Treasury Security that have been separated pursuant to the Separate Trading of Registered Interest and Principal of Securities (STRIPS) program operated by the Treasury Dept.[14] Because Money Market Instruments are excluded from the definition of TRACE-Eligible Security, the proposed rule change also amends the definition of "Money Market Instrument" to exclude U.S. Treasury Securities, including U.S. Treasury bills, which have maturities of one year or less, and therefore any U.S. Treasury Security, including U.S. Treasury bills, would be TRACE reportable under the proposed rule change.[15]

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[5] *See Joint Staff Report: The U.S. Treasury Market on October 15, 2014,* at 9 (July 13, 2015) (''JSR''), *available at https://www.sec.gov/reportspubs/special-studies/treasury-market-volatility-10-14-2014-joint-report.pdf.* (''Several agencies under a range of authorities are responsible for regulating various components of the Treasury market and its participants.''). Transactions in Treasury futures are ultimately reported to the Commodity Futures Trading Commission (''CFTC''), which has jurisdiction over futures. *See id.* at 10–12.

[6] The IAWG consists of representatives of the Treasury Dept., the Federal Reserve Board of Governors, the Federal Reserve Bank of New York, the SEC, and the CFTC.

[7] *See* JSR, *supra* note 5, at 7.

[8] *See* JSR, *supra* note 5, at 6–7, 45–49.

[9] The RFI, which was written in consultation with the staffs of all of the agencies involved in the JSR, was published in the **Federal Register** on January 22, 2016. *See* Notice Seeking Public Comment on the Evolution of the Treasury Market Structure, 81 FR 3928 (January 22, 2016) (''RFI Notice'').

[10] RFI Notice, *supra* note 9, at 3929.

[11] RFI Notice, *supra* note 9, at 3929.

[12] Press Release, U.S. Department of the Treasury, Statement on Trade Reporting in the U.S. Treasury Market (May 16, 2016), *available at https://www.treasury.gov/press-center/press-releases/Pages/jl0457.aspx* (''Treasury Press Release''). *See also* Press Release, U.S. Securities and Exchange Commission, Statement on Trade Reporting in the U.S. Treasury Market (May 16, 2016), *available at https://www.sec.gov/news/pressrelease/2016-90.html.*

[13] Unlike other Treasuries, savings bonds issued by the Treasury Dept. are generally non-transferable and are therefore not marketable securities purchased and sold in the secondary market. *See, e.g.,* 31 CFR 353.15 (providing that Series EE and Series HH ''[s]avings bonds are not transferable and are payable only to the owners named on the bonds, except as specifically provided in these regulations and then only in the manner and to the extent so provided''); *see also* 31 CFR 360.15 (establishing the same transfer provisions for Series I savings bonds).

[14] The STRIPS program is a program operated by the Treasury Dept. under which eligible securities are authorized to be separated into principal and interest components and transferred separately. *See* 31 CFR 356.2; *see generally* 31 CFR 356.31 (providing details on how the STRIPS program works).

(B) Reportable Transactions

In general, any transaction in a TRACE-Eligible Security is a "Reportable TRACE Transaction" unless the transaction is subject to an exemption.[16] Consequently, unless specifically exempted, the proposed rule change would define all transactions in U.S. Treasury Securities as "Reportable TRACE Transactions," and therefore subject to TRACE reporting requirements. As is currently the case with all TRACE reporting obligations, any member that is a "Party to a Transaction" in a TRACE-Eligible Security is required to report the transaction; thus, a reportable transaction in U.S. Treasury Securities between two FINRA members must be reported by both members.[17]

Rule 6730(e) currently includes six exemptions from the TRACE trade reporting requirements for certain types of transactions. The proposed rule change amends Rule 6730(e) to exempt from the reporting requirement purchases by a member from the Treasury Dept. as part of an auction. All U.S. Treasury Securities reportable to TRACE are offered to the public by the Treasury Dept. through an auction process.[18] When-issued trading in these securities, however, which would be reportable under the proposed rule change, can begin before the auction takes place after the Treasury Dept. announces an auction.[19]

The proposed rule change includes three new definitions for "Auction," "Auction Transaction," and "When-Issued Transaction" to address members' reporting obligations involving when-issued trading activity and purchases directly from the Treasury Dept. as part of an auction. The proposed rule change amends Rule 6730(e) to exempt an "Auction Transaction," defined as the purchase of a U.S. Treasury Security in an Auction,[20] from the TRACE reporting requirements. FINRA is proposing to exempt Auction Transactions from the reporting requirements because this transaction data is already maintained by the Treasury Dept. as part of the auction process and is readily accessible to regulators; therefore, reporting these transactions to TRACE would be duplicative and provide limited additional benefit to regulators. When-issued transactions, however, are not currently reported to the Treasury Dept., and the proposed rule change would require members to report "When-Issued Transactions," defined as "a transaction in a U.S. Treasury Security that is executed before the Auction for the security."

The proposed rule change also amends the list of exempted transactions in Rule 6730(e) to codify a long-standing interpretation for all TRACE-Eligible Securities that repurchase and reverse repurchase transactions are not reportable to TRACE.[21] Although repurchase and reverse repurchase transactions are structured as purchases and sales, the transfer of securities effectuated as part of these transactions is not made as the result of an investment decision but, rather, is more akin to serving as collateral pledged as part of a secured financing. Consequently, repurchase and reverse repurchase transactions are economically equivalent to financings, and the pricing components of these transactions are typically not the market value of the securities. For these reasons, historically, FINRA has taken the position that repurchase and reverse repurchase transactions should not be reported to TRACE and is proposing to codify this exemption as part of the proposed rule change.

The proposed rule change would require Reportable TRACE Transactions in U.S. Treasury Securities generally to be reported on the same day as the transaction on an end-of-day basis. Because FINRA is not currently proposing to disseminate any trade-level information to the public regarding transactions in U.S. Treasury Securities, the proposed rule change generally imposes a same-day reporting requirement as opposed to a more immediate requirement, such as 15 minutes. Under the proposed amendments to Rule 6730, Reportable TRACE Transactions in U.S. Treasury Securities executed on a business day at or after 12:00:00 a.m. Eastern Time through 5:00:00 p.m. Eastern Time must be reported the same day during TRACE System Hours.[22] Transactions executed on a business day after 5:00:00 p.m. Eastern Time but before the TRACE system closes must be reported no later than the next business day (T+1) during TRACE System Hours, and, if reported on T+1, designated "as/of" and include the date of execution. Transactions executed on a business day at or after 6:30:00 p.m. Eastern Time through 11:59:59 p.m. Eastern Time—or on a Saturday, a Sunday, a federal or religious holiday or other day on which the TRACE system is not open at any time during that day (determined using Eastern Time)—must be reported the next business day (T+1) during TRACE System Hours, designated "as/of," and include the date of execution.

(C) Reportable Transaction Information

Rule 6730(c) lists the following transaction information that must be reported to TRACE for each Reportable TRACE Transaction:

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[15] *See* 31 CFR 356.5(a). Rule 6710(o) defines a "Money Market Instrument" as "a debt security that at issuance has a maturity of one calendar year or less, or, if a discount note issued by an Agency, as defined in paragraph (k), or a Government-Sponsored Enterprise, as defined in paragraph (n), a maturity of one calendar year and one day or less."

[16] For purposes of the trade reporting rules, FINRA considers a "trade" or a "transaction" to entail a change of beneficial ownership between parties. *See, e.g.,* Securities Exchange Act Release No. 74482 (March 11, 2015), 80 FR 13940, 13941 (March 17, 2015) (Order Approving SR–FINRA–2014–050) (noting that, in the context of TRACE reporting, "[b]ecause the transaction between the member and its non-member affiliate represents a change in beneficial ownership between different legal entities, it is a reportable transaction and is publicly disseminated under the current rule"); Trade Reporting Frequently Asked Questions, Q100.4, available at *http://www.finra.org/industry/trade-reporting-faq#100* (defining "trade" and "transaction" for purposes of the equity trade reporting rules as a change in beneficial ownership). For this reason, although trading a principal or interest component of a U.S. Treasury Security that has been separated under the STRIPS program would constitute a Reportable TRACE Transaction, the act of separating or reconstituting the components of a U.S. Treasury Security under the STRIPS program would not constitute a Reportable TRACE Transaction. FINRA is proposing to adopt Supplementary Material .05 to Rule 6730 to clarify the reporting obligations in this scenario.

[17] *See* Rule 6730(a), (b)(1). The term "Party to a Transaction" is defined in Rule 6710(e) as "an introducing broker, if any, an executing broker-dealer, or a customer." For purposes of the definition, the term "customer" includes a broker-dealer that is not a FINRA member. *See* Rule 6710(e).

[18] The regulations governing the sale and issuance of these Treasuries, as well as the auction process, are set forth in Part 356 of Title 31 of the Code of Federal Regulations.

[19] *See* Kenneth D. Garbade and Jeffrey F. Ingber, *The Treasury Auction Process: Objectives, Structure, and Recent Adaptations,* 11 Current Issues in Econ. & Fin., Feb. 2005, at 2, *available at https://www.newyorkfed.org/research/current_issues/ci11-2.html.*

[20] The proposed rule change defines an "Auction" as "the bidding process by which the U.S. Department of the Treasury sells marketable securities to the public pursuant to part 356 of Title 31 of the Code of Federal Regulations." *See* 31 CFR 356.2.

[21] *See* Reporting of Corporate and Agencies Debt Frequently Asked Questions, Question 4.6, *available at http://www.finra.org/industry/faq-reporting-corporate-and-agencies-debt-frequently-asked-questions-faq.*

[22] TRACE System Hours are currently 8:00:00 a.m. Eastern Time through 6:29:59 p.m. Eastern Time on a business day. *See* Rule 6710(t).

(1) CUSIP number or, if a CUSIP number is not available at the Time of Execution, a similar numeric identifier or a FINRA symbol;

(2) The size (volume) of the transaction, as required by Rule 6730(d)(2);

(3) Price of the transaction (or the elements necessary to calculate price, which are contract amount and accrued interest) as required by Rule 6730(d)(1);

(4) A symbol indicating whether the transaction is a buy or a sell;

(5) Date of Trade Execution (for "as/of" trades only);

(6) Contra-party's identifier (MPID, customer, or a non-member affiliate, as applicable);

(7) Capacity—Principal or Agent (with riskless principal reported as principal);

(8) Time of Execution;

(9) Reporting side executing broker as "give-up" (if any);

(10) Contra side Introducing Broker in case of "give-up" trade;

(11) The commission (total dollar amount);

(12) Date of settlement; and

(13) Such trade modifiers as required by either the TRACE rules or the TRACE users guide.

The proposed rule change would generally apply the existing information requirements for Reportable TRACE Transactions to trade reports in Reportable TRACE Transactions in U.S. Treasury Securities; however, FINRA is proposing several amendments to Rule 6730 to clarify how some of this information would be reported if the transaction involves a U.S. Treasury Security. First, the proposed rule change amends Rule 6730 to clarify that, because when-issued trading is based on yield rather than on price as a percentage of face or par value, members should report the yield in lieu of the price when the transaction is a When-Issued Transaction, as defined in the TRACE rules. The proposed amendments also make clear that, as is the case whenever price is reported for a transaction executed on a principal basis, the yield reported by a member for a When-Issued Transaction must include any mark-up or mark-down. If the member, however, is acting in an agency capacity, the total dollar amount of any commission must be reported separately.

Second, the proposed rule change would require reporting of a more precise time of execution for transactions in U.S. Treasury Securities that are executed electronically. A significant portion of the trading activity in the U.S. Treasury cash market is conducted on electronic platforms. As noted in the RFI, inter-dealer trading in the cash market increasingly makes use of electronic platforms operated by inter-dealer brokers, and "a significant portion of trading in the dealer-to-customer market occurs on platforms that facilitate the matching of buy and sell orders primarily through request for quote ("RFQ") systems."[23] Because many of these electronic platforms capture timestamps in sub-second time increments, FINRA is proposing new Supplementary Material .04 to Rule 6730 that would require that, when reporting transactions in U.S. Treasury Securities executed electronically, members report the time of execution to the finest increment of time captured in the member's system (*e.g.*, milliseconds or microseconds) but, at a minimum, in increments of seconds. FINRA is not requiring members to update their systems to comply with a finer time increment; rather, the proposed rule change would simply require members to report the time of execution to TRACE in the same time increment the member's system captures.[24]

Finally, FINRA is proposing a new trade indicator and two new trade modifiers that reflect unique attributes of the U.S. Treasury cash market. The proposed rule change would establish a new trade indicator for any Reportable TRACE Transaction in a U.S. Treasury Security that meets the definition of "When-Issued Transaction." Such an indicator is necessary so that FINRA can readily determine whether price is being reported on the transaction based on a percentage of face or par value or whether, as required for When-Issued Transactions, the member is reporting the yield. The indicator would also be used to validate trades in a U.S. Treasury Security that are reported with an execution date before the auction for the security has taken place.

In addition to the new indicator, the proposed rule change would require the use of two new modifiers when applicable to reported transactions. Because individual transactions in U.S. Treasury Securities are often executed as part of larger trading strategies, individual transactions undertaken as part of these strategies can often be priced away from the current market for legitimate reasons. FINRA is proposing two new modifiers to indicate particular transactions that are part of larger trading strategies. First, the proposed rule change would require that members append a ".B" modifier to a trade report if the transaction being reported is part of a series of transactions where at least one of the transactions involves a futures contract (*e.g.*, a "basis" trade). Second, the proposed rule change would require that members append an ".S" modifier to a trade report if the transaction being reported is part of a series of transactions where at least one of the transactions is executed at a pre-determined fixed price or would otherwise result in the transaction being executed away from the current market (*e.g.*, a fixed price transaction in an "on-the-run" security as part of a transaction in an "off-the-run" security). These modifiers would allow FINRA to better understand and evaluate execution prices for specific transactions in U.S. Treasury Securities that may otherwise appear aberrant because they are significantly outside of the price range for that security at that time. Among other things, FINRA believes that these modifiers could reduce the number of false positive results that could be generated through automated surveillance patterns that include the price as part of the pattern.

(D) Other Amendments

The proposed rule change amends Rule 6750 regarding the dissemination of transaction information reported to TRACE. As indicated by numerous commenters to the RFI, there is substantial disagreement as to the potential benefits of public dissemination of information on transactions in U.S. Treasury Securities. Many commenters expressed concerns about public dissemination of these transactions, and these concerns are heightened when some, but not all, market participants are reporting transactions. Consequently, at this time, FINRA is not proposing to disseminate information on transactions in U.S. Treasury Securities, and the proposed rule change amends Rule 6750(b) to add transactions in U.S. Treasury Securities to the list of transactions for which information will not be disseminated.

The proposed rule change also amends two fee provisions in the FINRA rules to reflect the fact that, initially, FINRA will not be charging transaction-level fees on transactions in U.S. Treasury Securities reported to TRACE. First, the proposed rule change amends Section 1(b)(2) of Schedule A to the FINRA By-Laws to exclude transactions in U.S. Treasury Securities from the Trading Activity Fee ("TAF"). Second, the proposed rule change amends Rule 7730 to exclude transactions in U.S. Treasury Securities from the TRACE transaction reporting fees. However, because FINRA will incur costs to expand the TRACE system and to enhance its examination and surveillance efforts to monitor its members' trading activity in U.S. Treasury Securities, it is considering the appropriate long-term funding approach for the program and will analyze potential fee structures once it has more data relating to the size and volume of U.S. Treasury Security reporting.

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[23] RFI Notice, *supra* note 9, at 3928.

[24] FINRA rules governing trade reporting of equity securities currently require members to report time to the millisecond if the member captures time to that level of granularity. *See* Rule 6380A, Supplementary Material .04; Rule 6380B, Supplementary Material .04; Rule 6622, Supplementary Material .04; *see also Regulatory Notice* 14–21 (May 2014).

Finally, the proposed rule change amends Rule 0150 to add the FINRA Rule 6700 Series to the list of FINRA rules that apply to "exempted securities," except municipal securities.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval. The effective date will be no later than 365 days following Commission approval.[25] FINRA understands that providing sufficient lead-time between the publication of technical specification and the implementation date is critical to firms' ability to meet the announced implementation date; FINRA will work to publish technical specifications as soon as possible after SEC approval of the proposed rule change.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[26] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Prior to 1993, Section 15A(f) of the Act imposed limitations on a registered security association's ability to adopt rules applicable to transactions in exempted securities;[27] however, the Government Securities Act Amendments of 1993 ("GSAA") eliminated these statutory limitations.[28] FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(9) of the Act,[29] which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate. FINRA believes that the proposed rule change creates an effective structure for FINRA members to report transactions in U.S. Treasury Securities so that transaction information is available to regulators. FINRA believes the proposed reporting requirements will significantly enhance its, and other regulators', ability to review transactions in U.S. Treasury Securities to identify trading activity that may violate applicable laws or regulations. FINRA believes that leveraging the existing TRACE structure and reporting model will reduce the burdens on firms to comply with the new reporting obligations, thus making the implementation more efficient.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

(a) Need for the Rule

As discussed above, the official sector does not currently receive any regular reporting of Treasury cash market transactions following auction. There is no central database reflecting the trading activities in the market of Treasuries. Recent events such as the anomalous price behavior of October 15, 2014 have showcased the need for a thorough review of the market structure by the official sector. The data collected under the proposed rule change will enable FINRA to enhance monitoring and enforcement of best execution and other broker-dealer obligations regarding transactions in Treasuries. The data will also be necessary for the official sector to conduct comprehensive market surveillance for Treasuries. As summarized by the RFI: "The need for more comprehensive official sector access to data, particularly with respect to U.S. Treasury cash market activity, is clear."[30]

(b) Economic Baseline

The proposed rule change would impose reporting requirements on Treasury cash market participants that are FINRA members, extending with some modification the TRACE reporting requirements to transactions in U.S. Treasury Securities.[31] The current Treasury cash market structure serves as an economic baseline to assess the potential impacts on FINRA members, non-FINRA members, trading venues and investors. In an effort to rely to the extent possible on empirical evidence, much of the description of current activities relies on public evidence, primarily collected by regulators for a period preceding and including the October 15, 2014 event. This information is, in some cases, more than two years old and may not reflect current practices. These data are supplemented by discussions with a wide range of market participants.

(i) Overview of Treasury Cash Market

Broadly, the secondary markets for Treasuries can be categorized into two segments: Cash and futures. The Treasury cash market has been bifurcated between the inter-dealer market, in which dealers trade with one another, and the dealer-to-customer market, where customers may include asset managers, pension funds, insurance companies, and corporations.[32] The daily trading volume in the U.S. Treasury cash market was estimated to be $510 billion for the first two weeks of April 2014 and $1,214 billion on October 15, 2014, when trading volume reached a record high.[33] The inter-dealer market accounted for approximately 45% of the trading volume for the first two weeks of April 2014 and 53% for October 15, 2014.[34] Traders in the cash market seek to establish positions as an investment and an effective hedge for other positions. Trading in the cash market also reflects short term funding activities, in the form of repurchase agreements. Trading strategies may also include simultaneous trades of different cash Treasury securities or cash and futures in order to hedge interest rate risk or arbitrage away small pricing discrepancies.

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[25] FINRA anticipates staggering the implementation dates so that the general reporting requirement is implemented before members are required to include the trade modifiers described above. Specific implementation dates will be announced in the *Regulatory Notice*.

[26] 15 U.S.C. 78*o*–3(b)(6).

[27] Before 1986, Section 15A(f) of the Act provided that "[n]othing in this section shall be construed to apply with respect to any transaction by a broker or dealer in any exempted security." *See* 15 U.S.C. 78*o*–3 (historical notes). In 1986, the Government Securities Act of 1986 ("GSA") established a federal system for the regulation of brokers and dealers who transact business in government securities and certain other exempted securities. *See* Government Securities Act of 1986, Public Law 99–571, 100 Stat. 3208 (1986). The GSA, among other things, amended Section 15A(f) to provide that, "[e]xcept as provided in paragraph (2) of this subsection, nothing in this section shall be construed to apply with respect to any transaction by a registered broker or dealer in any exempted security." *See* Government Securities Act of 1986, Public Law 99–571, 102(g)(1), 100 Stat. 3208 (1986). Paragraph (f)(2), which was added by the GSA, provided that a registered securities association could adopt and implement rules with respect to exempted securities to (1) enforce members' compliance with the relevant provisions of the Act and rules and regulations thereunder, (2) adequately discipline its members, (3) inspect members' books and records, and (4) prohibit fraudulent, misleading, deceptive and false advertising. *Id.*

[28] *See* Government Securities Act Amendments of 1993, Public Law 103–202, § 106(b)(1), 107 Stat. 2344 (1993). *See also* NASD *Notice to Members* 96–66 (October 1996); Securities Exchange Act Release No. 37588 (August 20, 1996), 61 FR 44100 (August 27, 1996) (Order Approving File No. SR–NASD–95–39). Although the GSAA also included a provision explicitly prohibiting the SEC from adopting regular reporting requirements, the GSAA included no such prohibition on FINRA. *See* Government Securities Act Amendments of 1993, Public Law 103–202, 103(a), 107 Stat. 2344 (1993).

[29] 15 U.S.C. 78*o*–3(b)(9).

[30] RFI Notice, *supra* note 9, at 3931.

[31] TRACE currently covers corporate debt securities, agency debentures, asset- and mortgage-backed securities.

[32] As discussed further below, firms in the inter-dealer market can be grouped into several broad categories: Bank dealer, non-bank dealer, hedge fund, asset manager, and PTFs. They may or may not be FINRA members. *See* JSR, supra note 5, at 12.

The inter-dealer market is dominated by automated trading, sometimes in large volumes and at high speed. The primary locations for price discovery in the Treasury cash market are the electronic trading platforms BrokerTec and eSpeed, which utilize a central limit order book ("CLOB") protocol.[35] These platforms are operated by broker-dealers or affiliates of broker-dealers that are registered with the SEC and are FINRA members. In the inter-dealer market, the majority of trading occurs in the most recently issued Treasuries, known as "on-the-run" securities. While on-the-runs are the most actively traded Treasuries, likely accounting for more than half of total daily trading volumes, they make up less than 5% of outstanding marketable Treasuries.[36]

The dealer-to-customer market has less visibility to regulators and many market participants. In contrast to the inter-dealer market, a significant portion of trading in the dealer-to-customer market occurs on platforms that facilitate the matching of buy and sell orders primarily through request for quote ("RFQ") systems. These platforms are increasingly electronic, but are generally not conducive to high frequency trading strategies.[37] The major RFQ platforms for Treasuries are TradeWeb and Bloomberg.[38] Much of the dealer-to-customer activity still takes place over the phone (voice). An ad hoc survey of trading activity of the largest dealers, estimated to represent more than half of overall dealer-to-customer activity, revealed that voice trading remains an important protocol for executing customer trades.[39] An estimated 62% of this dealer-to-customer trading volume still takes place over the phone on normal trading days, with the remaining 38% occurring via RFQ systems.[40] The dealer-to-customer market serves an important role in liquidity provision for older, "off-the-run" issues and other less liquid securities. For example, the average daily trading volume on TradeWeb and Bloomberg was estimated to be $22 billion for on-the-runs and $25 billion for off-the-runs during April 2–17, 2014.[41]

(ii) Treasury Cash Market Participants

As reported by the JSR, participants of the inter-dealer market can be grouped into several broad categories based on their business model and corporate structure: Bank-dealer, non-bank dealer, hedge fund, asset manager, and PTFs.[42] PTFs are increasingly prevalent and now account for the majority of trading and standing quotes in the order book of the inter-dealer cash market.[43] By contrast, bank-dealers still account for a majority of secondary cash market trading overall (when including dealer-to-customer trading), but they constitute well under half of the trading and quoting activity in the inter-dealer cash market.[44] For example, in the inter-dealer market on October 15, 2014, PTFs accounted for more than 50% of the total trading volume across various maturities in the cash market, while bank-dealers accounted for roughly 30 to 40% of volume in the cash market.[45]

When asked, market participants offer a wide range of estimates of the percentage of cash market activities conducted by FINRA members in the Treasury market. These estimates range from 25%–65% of the dollar volume, with most participants indicating that broker-dealers remain particularly active in on-the-run trading.

While bank-dealers may account for a minority share of trading volume in the inter-dealer market, they trade significant volume directly with their customers. The Federal Reserve Bank of New York designated 23 primary dealers to serve as trading counterparties in its implementation of monetary policy.[46] These primary dealers are included in the bank-dealer category of the JSR. Data reported to the Federal Reserve Bank of New York by the primary dealers show that over the first three quarters of 2015, average daily activity of these dealers in the dealer-to-customer market was $292 billion.[47] Out of the 23 primary dealers, 21 are broker-dealer FINRA members and would be subject to the proposed reporting requirements. FINRA understands that bank holding companies that also include a broker-dealer affiliate typically conduct the majority of the trading through the broker-dealer. The bank-regulated dealer's activities are typically limited to investment for its own portfolios or for hedging purposes. In addition, the broker-dealer affiliate may enter repurchase agreement transactions with the bank-regulated dealer, and the bank-regulated dealer then reverses the Treasuries out to its customers.

To assess the potential impact of the proposed rule change, it may also be useful to examine the proportion of government securities brokers ("GSBs") or government securities dealers ("GSDs") that would be subject to the proposed reporting requirements. GSBs and GSDs are designations used by FINRA and bank regulators for regulated entities acting as brokers or dealers in the government securities markets. Approximately 1,260 FINRA members identified themselves as GSBs or GSDs on Form BD.[48] FINRA understands that there are at least 23 non-FINRA members that registered as GSDs with their respective federal banking regulators. These entities are regulated by the Office of the Comptroller of the Currency (19 firms), the Federal Reserve (three firms), or the Federal Deposit Insurance Corporation (one firm).

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[33] *See* Federal Reserve Bank of New York, Michael Fleming, Frank Keane and Ernst Schaumburg, *Primary Dealer Participation in the Secondary U.S. Treasury Market*, Liberty Street Economics, February 12, 2016 ("Primary Dealer Participation") *available at http://libertystreeteconomics.newyorkfed.org/2016/02/primary-dealer-participation-in-the-secondary-us-treasury-market.html#.V4hpXvkrJD8.*

[34] *Id.*

[35] RFI Notice, *supra* note 9, at 3929.

[36] Chris Cameron, James Clark and Gabriel Mann, *Examining Liquidity in On-the-Run and Off-the-Run Treasury Securities*, Treasury Notes (blog) (May 20, 2016), *available at https://www.treasury.gov/connect/blog/Pages/Examining-Liquidity-in-On-the-Run-and-Off-the-Run-Treasury-Securities.aspx.*

[37] RFI Notice, *supra* note 9, at 3928.

[38] *See* Federal Reserve Bank of New York, Ernst Schaumburg, *A Preliminary Look at Dealer-to-Customer Markets on October 15, 2014*, presented at the conference of the Evolving Structure of the U.S. Treasury Market (October 20–21, 2015) ("Preliminary Look") *available at https://www.newyorkfed.org/medialibrary/media/newsevents/events/markets/2015/October-15-Dealer-to-Customer-Analysis.pdf.*

[39] *See* Primary Dealer Participation, *supra* note 33.

[40] *See* Primary Dealer Participation, *supra* note 33.

[41] *See* Preliminary Look, *supra* note 38.

[42] *See* JSR, *supra* note 5, at 12. When referring to findings from the JSR or other source material citing to the JSR, this filing relies on the entity definitions in the JSR. In its description of market participants, the JSR does not attempt to separate FINRA-member broker-dealers from other participants. Bank-dealers include FINRA members, their affiliates and dealers supervised by federal or state banking regulators. Elsewhere, this filing refers to FINRA-member broker dealers as firms, FINRA members or broker-dealers and other dealers as bank-regulated dealers.

[43] *See* James Clark and Gabriel Mann, *A Deeper Look at Liquidity Conditions in the Treasury Market*, Treasury Notes (blog) (May 6, 2016), *available at https://www.treasury.gov/connect/blog/Pages/A-Deeper-Look-at-Liquidity-Conditions-in-the-Treasury-Market.aspx.*

[44] *Id.* The article cites the JSR and does not attempt to separate FINRA members from dealers supervised by federal or state banking regulators.

[45] *See* JSR, *supra* note 5, at 21.

[46] *See* Federal Reserve Bank of New York, *Primary Dealers List, available at https://www.newyorkfed.org/markets/pridealers_current.html.*

[47] *See* Primary Dealer Participation, *supra* note 33.

(c) Economic Impacts

(i) Benefits

The primary benefits from the proposed rule change arise from better monitoring of the Treasuries markets and participants by regulators. As discussed above, the primary locations for price discovery in the Treasury cash market are FINRA members, and transactions on those platforms would be subject to the proposed reporting requirements. Therefore, the proposed data collection is expected to capture a significant portion of transactions in the inter-dealer Treasury cash market. Further, since 21 of the 23 primary dealers are FINRA members, the data collection will shed light on the less transparent dealer-to-customer market and the trading of less liquid off-the-run securities. The data will improve the official sector's general monitoring and surveillance capabilities, including those designed to detect disruptive trading practices or risks to market stability. The proposed rule change will assist in the analysis of specific market events or trends, and provide regulators with the data to better evaluate how policy decisions may be expected to impact the market. Collectively, these should strengthen the Treasury cash market microstructure, reduce manipulative activities, and enhance investor protection. Moreover, the proposed data collection will permit FINRA to better monitor for compliance with its own rules. FINRA believes that using the existing TRACE reporting infrastructure is an efficient and cost effective mechanism to collect the data.

(ii) Potential Direct Costs

FINRA understands that the proposed rule change is associated with potential direct and indirect costs. Direct costs would be born primarily by FINRA-member firms with new reporting obligations or the clearing firms or other service providers who would report on their behalf.

The technical and operational costs associated with reporting Treasury cash market transactions are likely to vary across firms. For FINRA-member firms that are already reporting to TRACE, the costs associated with reporting U.S. Treasury Security transactions may be more limited. Within FINRA members that would be required to report Treasury cash market transactions, some are already reporting transactions in TRACE-Eligible Securities. These firms may be able to use or otherwise leverage the TRACE infrastructure and the associated compliance framework for U.S. Treasury Securities and reduce costs associated with the proposed rule change. For example, out of the FINRA members that identified themselves as GSBs or GSDs on Form BD, more than 70% had TRACE reporting activities between June 2015 and May 2016. Based on conversations with market participants, some current TRACE reporters will have much higher volume of reported transactions.

Based on the review of TRACE reporting for the year June 2015 through May 2016, FINRA identified 338 FINRA-member firms registered as GSBs or GSDs with no reported TRACE transactions. FINRA does not have any data to measure the extent of these firms' activities in the Treasury market today. For these firms that are active in the Treasury cash market but currently not subject to TRACE reporting requirements, the costs may be more significant as the firms will need to develop new reporting systems or enter into agreements with third parties to report and to develop and maintain regulatory compliance programs with respect to the new reporting requirements.

The larger inter-dealer platforms have indicated to FINRA that the operational challenges with collecting and delivering trade reporting may be material but not unduly large. A potential challenge for some platforms may be to update and maintain counterparty identification systems to meet the reporting requirements.

For introducing firms, FINRA understands that clearing firms and service providers will be able to offer regulatory reporting in U.S. Treasury Securities as they do currently for TRACE-Eligible Securities. Introducing firms may need to enhance their systems to provide the additional information necessary to complete a trade report. FINRA understands that these firms will also incur additional service costs, typically based on the trade volume reported on their behalf.

The new modifiers may introduce additional complexity to the proposed reporting, as traders at FINRA-member firms must apply the modifiers correctly and consistently to ensure meaningful data collection. Larger firms indicated that Treasuries are typically traded across many desks within the firm and this increases compliance costs because the new modifiers need to be identified by individual traders, as they are uniquely situated to know whether a specific trade is associated with a cross-instrument strategy that would require the modifier. Some firms also suggested that it may be difficult for a trader to know at the time of a trade whether it is part of a cross-instrument strategy, thus increasing complexity and their regulatory risk. Moreover, some firms indicated to FINRA that the costs associated with the expansion of current systems to accommodate the proposed new trade indicator and modifiers may be substantial. FINRA notes that it plans to phase in the modifiers to simplify the immediate implementation of the proposed rule change and provide firms additional time to make the necessary changes to implement the new modifiers.

Based on conversations with market participants, another potential challenge for some firms is to update their systems to meet the requirement that the yield reported by a member for a When-Issued Transaction must include any mark-up or mark-down. FINRA understands that there may be differences in current practices as to whether mark-ups and mark-downs are captured at the time of a When-Issued Transaction. Those firms that do not currently capture this information will incur additional costs in meeting this condition of the proposed rule.

Finally, all FINRA-member firms subject to the proposed rule change would need to establish policies and procedures and monitor ongoing reporting activities to ensure compliance with the reporting requirements.

The proposed rule change does not contemplate any direct assessments to firms reporting U.S. Treasury Security transactions to TRACE, as is required for other TRACE reportable events. But FINRA notes that it may seek to collect transaction or other forms of fees from reporting firms in the future, subject to a separate rule filing with the SEC.

(iii) Potential Indirect Costs

FINRA has identified several sources of potential indirect costs. Although the data collection is expected to capture a significant portion of the Treasury cash market, not all participants in this market are FINRA members, and this fact may impact the proposed rule change in different ways. First, the official sector may not be able to obtain a complete picture of Treasury cash market activities, thereby potentially limiting the benefits of the proposed rule change. Specifically, the proposed rule change only requires that FINRA-member firms be identified uniquely in the trade report. Thus, regulators would not be able to assign trading activity directly or uniquely to other market participants or reasonably estimate positions in government securities to those firms. This impediment may be mitigated by the authorities of regulators, particularly bank regulators, to monitor the activities of market participants under their immediate jurisdictions. But, FINRA notes that some PTFs and hedge funds do not have a primary prudential regulator, although regulators can gather identity and trading information of PTFs and hedge funds directly from the market participants under their jurisdiction.

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[48] General-purpose broker-dealers that conduct a government securities business must note this activity on their Form BD if it accounts for at least 1% of annual revenue from the securities or investment advisory business. It is possible that some broker-dealers trade government securities in small sizes without self-identifying as GSBs or GSDs.

Second, the proposed reporting requirements may create competitive disadvantage for FINRA members. This disadvantage may arise in several related contexts. First, the proposed rule change would impose operational and compliance costs avoided by some competitors. Second, regulators will have a greater ability to monitor the Treasury cash market activity of those firms uniquely identified in TRACE reporting. These firms' Treasury trading may face higher regulatory scrutiny than firms not so identified or lacking a primary prudential regulator. These firms may incur greater costs in responding to regulators' inquiries and other compliance-related activities. Firms reporting to TRACE might also find that dealers that are not required to report their transactions in U.S. Treasury Securities may try to leverage the lack of reporting as a competitive advantage with customers. Customers may migrate their business from FINRA-member firms to other dealers if they believe there is value to avoiding surveillance. Further, even FINRA-member firms may seek to migrate their government securities business to affiliates that are not FINRA members if they determine there is a net benefit to do so.

However, as noted above, the Treasury Dept. stated that it would develop a plan for collecting similar data from non-FINRA members active in the Treasury cash market. In addition, FINRA understands from market participants that these competitive impacts are likely small. For instance, market participants do not generally believe that regulatory reporting, by itself, would lead non-reporters to shift inter-dealer trading out of the large inter-dealer platforms in order to avoid reporting. The access to deep liquidity and the ability to transact when desired are deemed to be more valuable than the gain from anonymity.

The proposed rule change may also have other indirect impacts on the Treasury cash market. If the reporting costs are significant, they potentially may raise barriers to entry and reduce participation of FINRA members in the Treasury cash market. The depth of the "on the run" Treasury market, in particular, suggests that dealers face low margins in these securities, and any material additional regulatory costs may be a more significant impediment where the firm does not have extensive activity in Treasuries or can mutualize the regulatory costs through a third party provider. Moreover, depending on the competitiveness of the Treasury cash market, some FINRA-member firms may transfer the costs to customers and thereby increase transaction costs.

(d) Alternatives Considered

FINRA evaluated various options around implementing reporting as proposed. FINRA reviewed its existing reporting facilities as well as alternative options such as periodic batch-reporting and file submissions.

Given the intended coverage, FINRA determined that TRACE provided the most efficient and cost effective way of implementing the requirement for several reasons. First, the reporting structure that has been developed and implemented for other fixed income securities can be extended to U.S. Treasury Securities with minor modifications. Second, the infrastructure supporting TRACE is already in use by a significant portion of FINRA members affected by the proposal such that these members have connectivity established and currently report to the facility. In addition to the transaction reporting infrastructure itself, FINRA as well as member firms have developed supporting processes around the TRACE facility that can be leveraged, such as monitoring tools, compliance processes, and alerts.

Among other alternatives, FINRA considered other existing FINRA trade reporting facilities, including the OTC Reporting Facility and the Alternative Display Facility, that support transaction reporting for equity securities and concluded these facilities were not suitable for reporting of transactions in U.S. Treasury Securities and that TRACE, with its existing reporting protocols and framework, was preferable. FINRA also considered developing an alternative processes of collecting the information (such as batch file submissions); however, such a process would require creation and maintenance of an additional, parallel infrastructure by all affected firms as well as FINRA, providing for a costlier implementation and ongoing support. Some firms may find it more cost effective to report trades singularly throughout the day, while others may prefer providing trade reports at fixed intervals, allowing firms sufficient time to ensure the accuracy of the transaction information prior to submitting the information to FINRA. FINRA notes that much of the benefits of batch-reporting can be achieved by providing an end-of-day reporting timeframe.

The existing TRACE reporting framework requires that if there are two FINRA members executing a trade (one as the buyer and one as the seller), both FINRA members must report. Several commenters to the RFI advocated for one-sided reporting rather than two-sided reporting. FINRA determined that maintaining the two-sided reporting framework is preferable and will allow FINRA to compare the information reported by each party to identify discrepancies or potential non-reporting by one party. Moreover, accommodating one-sided reporting would necessitate significant changes to the existing TRACE infrastructure that could affect all TRACE reporting firms and significantly reduce the benefits to using an existing system described above. In addition, FINRA believes the burdens to firms of two-sided reporting can be reduced because TRACE allows for one participant to report on behalf of another, provided the two parties have proper agreements in place to allow the party to report on the other party's behalf. Any such arrangements are voluntary, and each participant (including ATSs) can determine if they would like to provide this service to its trading partners or subscribers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received; however, the Treasury Dept. received numerous comments in response to the RFI addressing reporting requirements for transactions in Treasuries. Fifty-two comments were submitted. Approximately 30 letters addressed reporting to the official sector or public dissemination.[49]

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[49] The RFI Notice and all of the comment letters submitted in response to the RFI Notice are available at *https://www.regulations.gov/*

As noted above, Section III of the RFI emphasized the need for more comprehensive official sector access to transaction data for Treasuries and requested comment on the types of data that should be made available to the official sector regarding the Treasury cash securities market and on numerous practical considerations associated with gathering that data. The RFI noted that "[t]he need for more comprehensive official sector access to data, particularly with respect to U.S. Treasury cash market activity, is clear." [50] Section III solicited views on ways to collect, aggregate, and monitor data but also included questions on additional infrastructure that would be necessary for market participants to begin reporting data, especially given the diversity of trading venues in the Treasury markets and the fact that trading activity in these markets "often extends beyond individual regulator boundaries." [51] Section III included questions concerning the scope of potential transaction reporting obligations and market participant obligations, numerous specific questions on the mechanics of trade reporting, and questions as to whether additional data (*e.g.*, orders, quotes) should be reported.[52]

Approximately 26 commenters expressed some level of support for official sector reporting. As the Treasury Dept. noted, "[t]he responses to the RFI expressed broad support for more comprehensive reporting to regulators, including nearly unanimous support for reporting additional information on Treasury cash market activity." [53]

Several commenters to the RFI provided views on specific reporting requirements. Industry participants expressed the view that a single-side reporting obligation was preferable to having multiple counterparties or venues report the same transaction; [54] however, one commenter suggested using a two-sided reporting structure.[55] Those commenters expressing support for single-side reporting often also suggested that trades conducted on a trading platform be reported by the trading platform rather than the counterparties; [56] however, this view was not unanimous.[57] MFA suggested that requiring all Treasury cash market participants to report "would be extremely costly and burdensome for managers/funds . . . and could deter some market participants from trading in the Treasury cash markets." [58]

As noted above, the proposed rule change follows the current TRACE reporting structure requiring that any Party to the Transaction that is a FINRA Member report the transaction to TRACE; therefore, if two or more FINRA members are Parties to the Transaction, each member will have an independent obligation to report the transaction to TRACE. FINRA believes that this reporting structure helps to ensure the accuracy of reported transactions and, as a result, significantly enhances the quality of the audit trail. Although requiring multiple reports for some transactions may increase the overall number of errors, it also provides FINRA with a means to validate reports that does not exist if a single party reports the transaction. FINRA believes that the overall benefits to the audit trail of requiring multiple reports outweigh the costs, particularly since FINRA is proposing to initially exempt reports in U.S. Treasury Securities from the TRACE trade reporting fees.

There was widespread support among the commenters to extend reporting obligations to all Treasury securities rather than a defined subset.[59] The suggested timing of submitting trade reports varied between those generally urging real-time reporting,[60] delayed reporting,[61] or a combination thereof depending upon the type of security.[62] As one commenter noted, the timing of trade report submission is also influenced by the purpose: Reporting solely for regulatory purposes does not require the immediacy that would be necessary if post-trade market transparency were also a goal.[63]

As discussed above, FINRA is proposing to impose reporting obligations on all Treasuries with the exception of savings bonds, which are not generally traded in the secondary market; thus, the proposed reporting requirements would apply to all marketable Treasuries and all transactions in those securities with the exceptions of purchases in the initial auction, repurchase transactions, and reverse repurchase transactions.

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document?D=TREAS-DO-2015-0013-0001. The following comment letters are specifically cited below: Letters to David R. Pearl, Office of the Executive Secretary, Treasury Dept., from Citadel LLC (April 22, 2016) ("Citadel"); Direct Match (April 22, 2016) ("Direct Match"); Federal Reserve Bank of Chicago (May 5, 2016) ("FRB Chicago"); FIA Principal Traders Group (April 22, 2016) ("FIA PTG"); ICAP plc (April 22, 2016) ("ICAP"); Investment Company Institute (April 8, 2016) ("ICI"); KCG Holdings, Inc. (April 28, 2016) ("KCG"); Andrei Kirilenko, Director, Centre for Global Finance and Technology, Imperial College Business School (April 22, 2016) ("Kirilenko"); Managed Funds Association (April 22, 2016) ("MFA"); MarketAxess Holdings, Inc. and Xtracker Ltd. (April 21, 2016) ("MarketAxess"); Modern Markets Initiative (April 22, 2016) ("MMI"); Morgan Stanley & Co. (April 22, 2016) ("Morgan Stanley"); Nasdaq, Inc. (April 22, 2016) ("Nasdaq"); Prudential Fixed Income (April 21, 2016) ("Prudential"); RBS Securities Inc. (April 22, 2016) ("RBS Securities"); SIFMA, Asset Management Group (April 22, 2016) ("SIFMA AMG"); SIFMA and American Bankers Association (April 22, 2016) ("SIFMA/ABA"); Tradeweb Markets LLC (April 22, 2016) ("Tradeweb"); Rakesh Tripathy (March 22, 2016) ("Tripathy"); Virtu Financial, Inc. (March 18, 2016) ("Virtu"); Wells Fargo & Company (April 21, 2016) ("Wells Fargo").

[50] *See* RFI Notice, *supra* note 9, at 3931.

[51] *See* RFI Notice, *supra* note 9, at 3931–32.

[52] *See* RFI Notice, *supra* note 9, at 3932–33.

[53] Treasury Press Release, *supra* note 12.

[54] *See* Citadel, at 11 (suggesting that "single-sided reporting (*i.e.*, where each transaction is only reported by one party) has proven successful in reducing complexity and data discrepancies under the CFTC's reporting regime for swaps"); MFA, at 5 ("On a practical level, it would also be much easier, more efficient and cost-effective to implement a single-sided reporting regime that requires trading platforms and intermediaries to report transactions."); RBS Securities, at 7 ("RBS notes that based on experience in other regulatory frameworks, bilateral reporting substantially increases the required technology and controls for compliance, with minimal additional benefit to the regulator or public."); SIFMA AMG, at 4 (arguing that a "'one-sided' approach is more operationally efficient and reduces the risk of trade reporting errors"). *See also* FIA PTG, at 23; Prudential, at 14; Tradeweb, at 5.

[55] *See* Kirilenko, at 1.

[56] *See* FIA PTG, at 23 ("Wherever possible, the official sector should use information provided by trading venues and depositories to support its information gathering."); MFA, at 4 (stating their view that "reporting should be by trading platforms, dealers and market makers/principal trading firms" because these entities "are in the best position to efficiently provide streamlined data to regulators").

[57] *See* MarketAxess, at 3 ("We would recommend placing the reporting responsibility on the counterparties to the trade rather than on the venue . . . so that firms have a single process, regardless of how and where the trade is executed.").

[58] MFA, at 5.

[59] *See* Citadel, at 10; FIA PTG, at 3; ICAP, at 6; MMI, at 10; Nasdaq, at 6; Prudential, at 13; Tripathy, at 5; Wells Fargo, at 5.

[60] *See* Citadel, at 10–11; Tradeweb, at 5 ("Such reporting should occur as frequently as real-time, although the implementation and phasing of any reporting requirement should be carefully evaluated with respect to the cost and the technical build required.").

[61] *See* FIA PTG, at 30 (recognizing that, while real-time reporting may be an end goal, "a reasonable standard would target the end-of-trading-day as a starting point for reporting objectives"); MarketAxess, at 3 ("T+1 reporting is sufficient to ensure that regulators have a timely picture of market activity and that firms have sufficient time to deliver the required level of accuracy."); Prudential, at 16.

[62] *See* Morgan Stanley, at 3 ("Timing requirements should vary based on transaction type, *e.g.*, illiquid investments should have a longer time to report.") Virtu, at 2 (suggesting real-time reporting for "electronically matched on-the-run trades," five-minute reporting for manual trades, fifteen-minute reporting for "trades in excess of a specified volume threshold in on-the-run Treasuries," and "an extended reporting window" for off-the-run Treasuries). Those in favor of real-time reporting—and generally real-time public dissemination—recognized the need for some exceptions. Citadel, for example, suggested exceptions of 15 to 30 minutes for block transactions and less liquid off-the-run securities. *See* Citadel, at 11.

[63] *See* MarketAxess, at 2.

Because FINRA is not currently proposing to disseminate any trade-level information to the public regarding transactions in U.S. Treasury Securities, the proposed rule change generally imposes a same-day reporting requirement as opposed to a more immediate requirement, such as 15 minutes. FINRA believes an end-of-day or next-day timing requirement strikes an appropriate balance between ensuring timely access by regulators to the transaction data without imposing unnecessary requirements on reporting firms. Permitting end-of-day or next-day reporting will also provide members with additional time to submit their filings and, if necessary, make any corrections to their trade reports before submission. This flexibility will provide members with more choices in how to comply with the reporting requirements, and FINRA believes this flexibility should reduce the burdens on firms in complying with the new reporting requirements and improve the accuracy of trade reports, particularly given the high volumes in which U.S. Treasury Securities are traded.

Relatively few commenters provided views on specific elements that should be reported to the official sector. In addition to the general transaction information necessary for effective transaction reporting (*e.g.,* security, side, size, price, time), some commenters suggested including:

- Trading venue;[64]
- settlement date;[65]
- category of counterparty;[66]
- type of trading protocol;[67]
- whether the transaction was cleared;[68] and
- whether the trade was part of a package transaction.[69]

As discussed above, the proposed rule change largely extends to transactions in U.S. Treasury Securities the existing TRACE reporting fields, which include settlement date, category of counterparties, and in some cases the trading venue (*e.g.,* alternative trading system (“ATS”) identifiers if the ATS does not also report the transaction). As noted, FINRA is proposing two new modifiers to capture information on transactions that are part of larger trading strategies. FINRA believes that, initially, the new fields and modifiers it is proposing are sufficient for surveillance and review of transaction activity; however, FINRA will monitor the information once reporting begins to determine whether additional transaction information may be needed to enhance the audit trail and its surveillance program.

Multiple commenters suggested that any reporting requirement should span across all market participants, and some commenters specifically noted the importance of regulatory cooperation, as a benefit for both regulators and for reporting firms.[70] FRB Chicago noted the current lack of regulation for the Treasury market and called for coordinated efforts to “harmonize the processes observed in the U.S. Treasury markets around trading, clearing and reporting requirements.”[71] SIFMA noted that reporting requirements “must meet the desire to provide the official sector with a comprehensive and expedient view of the markets” while also recognizing the burdens that reporting requirements could impose.[72] Similarly, MMI noted that the requirements must “cast an all-encompassing net” so that regulators have a comprehensive view of market activity and suggested that regulators “must have a complete picture of order, indicative pricing, RFQ responses and trade data across all instruments (cash and futures) all sectors (on-the-run and off-the-run) all methods (electronic and voice) and all platforms (IDBs, D2C Venues, etc.).”[73] Direct Match noted that lack of consistency could create regulatory arbitrage opportunities that could result in market changes.[74]

As noted above, after reviewing the comments, the Treasury Dept. and the SEC requested that FINRA consider a proposal to require its members to report Treasury cash market transactions to a centralized repository. FINRA has filed the proposed rule change in response to that request. Although the proposed rule change would apply only to FINRA members, the Treasury Dept. noted that it “will continue working with other agencies and authorities to develop a plan for collecting similar data from institutions who actively trade U.S. Treasury securities but are not FINRA members.”[75]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–FINRA–2016–027 on the subject line.

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[64] *See* Citadel, at 11; Direct Match, at 11; Morgan Stanley, at 3; Tradeweb, at 5.

[65] *See* Morgan Stanley, at 2. MarketAxess noted that settlement date is not a current field for MiFID transaction reporting in Europe but noted that a settlement date “beyond the standard settlement cycle may impact the agreed price, so there may be value in collecting that information, depending on the ultimate purpose of the reporting regime.” MarketAxess, at 4; *see also* FIA PTG, at 27 (noting that non-standard settlement dates may have reporting value).

[66] *See* Morgan Stanley, at 3.

[67] *See* Citadel, at 11 (suggesting examples of “voice, electronic RFQ, or CLOB [central limit order book]”).

[68] *See* Citadel, at 11.

[69] *See* Citadel, at 11. Citadel noted that common package transactions involving Treasuries include spread overs (an interest rate swap and a Treasury), curves (two Treasuries of different maturities), butterflies (three Treasuries of different maturities), and exchange for physicals (a future and a Treasury). Citadel also suggested that “to distinguish between different types of packages, data should also be collected on how many legs are associated with the specific package transaction and the instruments involved.”

[70] *See* Direct Match, at 10; FRB Chicago, at 5; ICI, at 4–5; KCG, at 3; MFA, at 4; MMI, at 10; SIFMA AMG, at 3–4; SIFMA/ABA, at 10. ICI explicitly noted the benefits to both regulators and reporters:

> Regulatory coordination will enhance the ability of Treasury, as well as other regulators, to conduct more comprehensive analysis and surveillance of trading in the Treasury markets by obtaining a broader view of these integrated markets, and increase regulators' ability to obtain higher quality and more consistent data. A coordinated rulemaking effort will help minimize compliance costs for market participants, to the extent they can utilize existing reporting infrastructures and requirements to meet any new reporting obligations that Treasury may impose. ICI, at 5.

[71] FRB Chicago, at 5.

[72] SIFMA/ABA, at 10.

[73] MMI, at 10. *See also* SIFMA AMG, at 4 (“[M]andating, establishing, and implementing an official sector reporting regime requires coordination across markets and jurisdictions.”)

[74] *See* Direct Match, at 10 (“[I]n a market as fragmented and as lightly-regulated as the one for Treasuries, the potential for adverse second order effects is substantial: In the event that regulations disadvantage a particular market segment, it is very easy for trading to move to another, or to create a new one.”).

[75] Treasury Press Release, *supra* note 12.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–FINRA–2016–027. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–FINRA–2016–027, and should be submitted on or before August 15, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[76]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17446 Filed 7–22–16; 8:45 am]

BILLING CODE 8011–01–P

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[76] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78360; File No. SR–NASDAQ–2016–096]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Adjustments to Nasdaq's Options Regulatory Fee

July 19, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 6, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make adjustments to its Options Regulatory Fee ("ORF") by amending NASDAQ Options Market LLC ("NOM") Rules at Chapter XV, Section 5.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on August 1, 2016.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to increase the ORF from $0.0019 to $0.0021 as of August 1, 2016 to account for a reduction in market volume the Exchange has experienced. The Exchange's proposed change to the ORF should balance the Exchange's regulatory revenue against the anticipated revenue [sic].

Background

The ORF is assessed to each member for all options transactions executed or cleared by the member that are cleared at The Options Clearing Corporation ("OCC") in the Customer range (*i.e.,* that clear in the Customer account of the member's clearing firm at OCC). The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed regulatory costs. The ORF is imposed upon all transactions executed by a member, even if such transactions do not take place on the Exchange.[3] The ORF also includes options transactions that are not executed by an Exchange member but are ultimately cleared by an Exchange member.[4] The ORF is not charged for member proprietary options transactions because members incur the costs of owning memberships and through their memberships are charged transaction fees, dues and other fees that are not applicable to non-members. The dues and fees paid by members go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation. The ORF is collected indirectly from members through their clearing firms by OCC on behalf of the Exchange.

The ORF is designed to recover a portion of the costs to the Exchange of the supervision and regulation of its members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The ORF applies to all "C" account origin code orders executed by a member on the Exchange. Exchange Rules require each member to record the appropriate account origin code on all orders at the time of entry in order to allow the Exchange to properly prioritize and route orders and assess transaction fees pursuant to the Rules of the Exchange and report resulting transactions to OCC.

[4] In the case where one member both executes a transaction and clears the transaction, the ORF is assessed to the member only once on the execution. In the case where one member executes a transaction and a different member clears the transaction, the ORF is assessed only to the member who executes the transaction and is not assessed to the member who clears the transaction. In the case where a non-member executes a transaction and a member clears the transaction, the ORF is assessed to the member who clears the transaction.

ORF Adjustments

The Exchange is proposing to increase the ORF from $0.0019 to $0.0021 as of August 1, 2016. In light of recent market volumes, the Exchange is proposing to change the amount of ORF that will be collected by the Exchange. The Exchange regularly reviews its ORF to ensure that the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs. The Exchange believes this adjustment will permit the Exchange to cover a material portion of its regulatory costs, while not exceeding regulatory costs.

The Exchange notified members of this ORF adjustment thirty (30) calendar days prior to the proposed operative date.[5]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that increasing the ORF from $0.0019 to $0.0021 as of August 1, 2016 is reasonable because the Exchange's collection of ORF needs to be balanced against the amount of regulatory revenue collected by the Exchange. The Exchange believes that the proposed adjustments noted herein will serve to balance the Exchange's regulatory revenue against the anticipated regulatory costs. While these adjustments result in an increase, the increase is modest and within the range of ORFs assessed by other options exchanges.

The Exchange believes that amending the ORF from $0.0019 to $0.0021 as of August 1, 2016 is equitable and not unfairly discriminatory because this adjustment would be applicable to all members on all of their transactions that clear as Customer at OCC. In addition, the ORF seeks to recover the costs of supervising and regulating members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities.

The ORF is not charged for member proprietary options transactions because members incur the costs of owning memberships and through their memberships are charged transaction fees, dues and other fees that are not applicable to non-members. Moreover, the Exchange believes the ORF ensures fairness by assessing higher fees to those members that require more Exchange regulatory services based on the amount of Customer options business they conduct.

Regulating Customer trading activity is more labor intensive and requires greater expenditure of human and technical resources than regulating non-Customer trading activity. Surveillance, regulation and examination of non-Customer trading activity generally tends to be more automated and less labor intensive. As a result, the costs associated with administering the Customer component of the Exchange's overall regulatory program are anticipated to be higher than the costs associated with administering the non-Customer component of its regulatory program. The Exchange proposes assessing higher fees to those members that will require more Exchange regulatory services based on the amount of Customer options business they conduct.[8] Additionally, the dues and fees paid by members go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation. The Exchange believes that the proposed ORF is a small cost for Customer executions. The Exchange has in place a regulatory structure to surveil for, examine and monitor the marketplace for violations of Exchange Rules. The ORF assists the Exchange to fund the cost of this regulation of the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. [sic] In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The Exchange does not believe that increasing its ORF creates an undue burden on intra-market competition because the adjustment will apply to all members on all of their transactions that clear as Customer at OCC. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs. Additionally, the dues and fees paid by members go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation. The Exchange's members are subject to ORF on other options markets.[9]

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[5] *See* Options Trader Alert #2016–16.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] The ORF is not charged for orders that clear in categories other than the Customer range at OCC (*e.g.*, NOM Market Maker orders) because members incur the costs of memberships and through their memberships are charged transaction fees, dues and other fees that go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation.

[9] The following options exchanges assess an ORF, Chicago Board Options Exchange, Incorporated ("CBOE"), C2 Options Exchange, Inc. ("C2"), the International Securities Exchange, LLC ("ISE"), NYSE Arca, Inc. ("NYSEArca") and NYSE AMEX LLC ("NYSEAmex"), BATS Exchange, Inc. ("BATS") and The NASDAQ Options Market LLC ("NOM").

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2016–096 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–096. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–096, and should be submitted on or before August 15, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17447 Filed 7–22–16; 8:45 am]

BILLING CODE 8011–01–P

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[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78357; File No. SR–NYSEArca–2016–94]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 1.1 To Establish an Official Closing Price for Exchange-Listed Securities if the Exchange Is Unable To Conduct a Closing Auction

July 19, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act"),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 6, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 1.1(ggP) to establish an Official Closing Price for Exchange-listed securities if the Exchange is unable to conduct a Closing Auction. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its rules to specify back-up procedures for determining an Official Closing Price for Exchange-listed securities if it is unable to conduct a Closing Auction in one or more securities due to a systems or technical issue.[4] Specifically, the Exchange proposes to amend NYSE Arca Equities Rule 1.1(ggP) ("Rule 1.1(ggP)") to establish an Official Closing Price for Exchange-listed securities if the Exchange is impaired.

The proposed changes are based on approved rules of the New York Stock Exchange, LLC ("NYSE") and NYSE MKT LLC ("NYSE MKT").[5] Those markets, together with the Exchange and the NASDAQ Stock Market LLC ("Nasdaq"), developed the back-up procedures after taking into consideration feedback from discussions with industry participants, including meeting the following key goals important to market participants:

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* New York Stock Exchange press release dated July 22, 2015, available here: *http://ir.theice.com/press-and-publications/press-releases/all-categories/2015/07-22-2015.aspx.*

[5] *See* Securities Exchange Act Release No. 78015 (June 8, 2016), 81 FR 38747 (June 14, 2016) (SR–NYSE–2016–18) and (SR–NYSEMKT–2016–31) ("OCP Approval Order").

- Providing a pre-determined, consistent solution that would result in a closing print to the applicable securities information processor (“SIP”) within a reasonable time frame from the normal closing time;
- Minimizing the need for industry participants to modify their processing of data from the SIPs; and
- Providing advance notification of the applicable closing contingency plan to provide sufficient time for industry participants to route any closing interest to an alternate venue to participate in that venue’s closing auction.

The Exchange also proposes to amend Rule 1.1(ggP) to specify that, for a UTP Security,[6] the Exchange would use the official closing price as disseminated by the primary listing exchange to determine the Trading Collar[7] for such security if there is no consolidated last sale price on the same trading day, or the Auction Reference Price[8] for such security.

Background

Current Rule 1.1(ggP) describes how the Exchange establishes the “Official Closing Price,” which is the reference price to determine the closing price in a security for purposes of Rule 7 Equities Trading. Rule 1.1(ggP) provides that the Official Closing Price is determined as follows:

- As provided for in Rule 1.1(ggP)(1), for securities listed on the Exchange, the Official Closing Price is the price established in a Closing Auction of one round lot or more on a trading day. If there is no Closing Auction or if a Closing Auction trade is less than a round lot on a trading day, the Official Closing Price is the most recent consolidated last sale eligible trade during Core Trading Hours on that trading day. If there were no consolidated last sale eligible trades during Core Trading Hours on that trading day, the Official Closing Price will be the prior trading day’s Official Closing Price.
- As provided for in Rule 1.1(ggP)(2), for securities listed on an exchange other than the Exchange, the Official Closing Price is the official closing price disseminated by the primary listing market for that security via a public data feed on a trading day. If the primary listing market does not disseminate an official closing price on a trading day, the Official Closing Price is the most recent consolidated last sale eligible trade during Core Trading Hours on that trading day. If there were no consolidated last sale eligible trades during Core Trading Hours on that trading day, the Official Closing Price will be the prior trading day’s Official Closing Price.

The rule further provides that an Official Closing Price may be adjusted to reflect corporate actions or a correction to a closing price, as disseminated by the primary listing market for the security.

In Rule 7, the Exchange uses the Official Closing Price for three purposes: (1) To determine the Auction Reference Price for a security, as provided for in Rule 7.35P(a)(8)(A); (2) to determine the Trading Collar for a security if there is no consolidated last sale price on the same trading day, as provided for in Rule 7.31P(a)(1)(B)(i); and (3) for securities listed on the Exchange only, for purposes of determining whether to trigger a Short Sale Price Test, as defined under Rule 7.16P(f)(2).[9]

Proposed Amendments

The Exchange proposes to amend Rule 1.1(ggP) to establish how the Exchange would determine an Official Closing Price if the Exchange is unable to conduct a Closing Auction in an NYSE Arca–listed security or securities due to a systems or technical issue. To reflect this change, the Exchange proposes to add new rule text as proposed Rules 1.1(ggP)(2)–(4) and re-number current Rule 1.1(ggP)(2) as proposed Rule 1.1ggP(5), as described in greater detail below.

Proposed Rules 1.1(ggP)(2)–(4) are based on NYSE Rules 123C(1)(e)(ii)–(iv) and NYSE MKT Rules 123C(1)(e)(ii)–(iv)—Equities with non-substantive differences to use NYSE Arca Equities terminology instead of NYSE terminology, as follows: “Corporation” or “NYSE Arca Marketplace” instead of “Exchange,” “Closing Auction” instead of “closing transaction,” “Core Trading Hours” instead of “regular trading hours,” and “ETP Holder” instead of “member organization.”[10] In addition, as under the NYSE and NYSE MKT rules, the Exchange proposes that the back-up procedures specified in proposed Rules 1.1(ggP)(2)–(4) would be applicable to Exchange-listed securities only.

As proposed, Rule 1.1(ggP)(2) would provide that if the Exchange determines at or before 3:00 p.m. Eastern Time that it is unable to conduct a Closing Auction in one or more NYSE Arca-listed securities due to a systems or technical issue, the Exchange would designate an alternate exchange for such security or securities. The Exchange would publicly announce the exchange designated as the alternate exchange via Trader Update. In such case, the Official Closing Price of each security would be determined on the following hierarchy:

- Proposed Rule 1.1(ggP)(2)(A) would provide that the Official Closing Price would be the official closing price for such security under the rules of the designated alternate exchange. For example, if the Exchange designates Nasdaq as the alternate exchange, the Official Closing Price would be based on Nasdaq Rule 4754, which defines how Nasdaq establishes an official closing price.

The proposed 3:00 p.m. cut off time was selected in part based on discussions with market participants regarding their capability to re-direct closing-only interest in Exchange-listed securities in time to participate in the closing auction of an alternate venue. By designating an alternate exchange before 3:00 p.m. Eastern Time, the Exchange believes that market participants would be more likely to have sufficient notice to direct any closing-only interest in Exchange-listed securities to the designated alternate exchange. By providing market participants sufficient time, when possible, to route closing-only interest to an alternate venue for participation in that exchange’s closing auction process, that alternate exchange’s closing auction would be more likely to result in a closing price that reflects market value for such security.

If there were insufficient interest for a closing auction on the designated alternate exchange, the Exchange believes that the rules of Nasdaq provide for an appropriate hierarchy of which price to use to determine the Official Closing Price.

- Proposed Rule 1.1(ggP)(2)(B) would provide if the designated alternate exchange does not have an official closing price in a security, the Official

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[6] As defined in NYSE Arca Equities Rule 1.1(ii), the term “UTP Security” means a security that is listed on a national securities exchange other than the Exchange and that trades on the NYSE Arca Marketplace pursuant to unlisted trading privileges.

[7] *See* NYSE Arca Equities Rule 7.31P(a)(1)(B)(i).

[8] *See* NYSE Arca Equities Rule 7.35P(a)(8)(A).

[9] The Exchange disseminates to the SIP the Official Closing Price as an “M” value. For a description of all sale conditions that are reportable to the SIP for Exchange-listed securities, including the “M” value, see the Consolidated Tape System Participant Communications Interface Specification, dated November 16, 2015, at 86, available here: ***https://www.ctaplan.com/publicdocs/ctaplan/notifications/trader-update/cts_input_spec.pdf.***

[10] *See* NYSE Arca Equities Rules 1.1(k) (defining the term “Corporation”); 1.1(e) (defining the term “NYSE Arca Marketplace”); 7.35P(d) (defining the term “Closing Auction”); 1.1(j) (defining the term “Core Trading Hours”); and 1.1(n) (defining the term “ETP Holder”).

Closing Price would be the volume-weighted average price ("VWAP") of the consolidated last-sale eligible prices of the last five minutes of trading during Core Trading Hours up to the time that the VWAP is processed. The VWAP would include any closing transactions on an exchange and would take into account any trade breaks or corrections up to the time the VWAP is processed. Because the VWAP would include any last-sale eligible trades, busts, or corrections that were reported up to the time that the SIP calculates the VWAP, the Exchange believes that the VWAP price would reflect any pricing adjustments that may be reported after 4:00 p.m. ET.

As discussed above, the manner by which exchanges calculate their respective official closing prices provide for an official closing price in the absence of a closing transaction. Accordingly, the Exchange believes that in circumstances when the Exchange designates an alternate exchange, the VWAP calculation would rarely be used to determine the Official Closing Price for an Exchange-listed security.

- Proposed Rule 1.1(ggP)(2)(C) would provide that if the designated alternate exchange does not have an official closing price in a security and there were no consolidated last-sale eligible trades in the last five minutes of trading during Core Trading Hours in such security, the Official Closing Price would be the last consolidated last-sale eligible trade during Core Trading Hours on that trading day.
- Proposed Rule 1.1(ggP)(2)(D) would provide that if the designated alternate exchange does not have an official closing price in a security and there were no consolidated last-sale eligible trades in a security on a trading day in such security, the Official Closing Price would be the prior day's Official Closing Price.
- Finally, proposed [sic] 1.1(ggP)(2)(E) would provide that if an Official Closing Price for a security cannot be determined under (A), (B), or (C) of proposed Rule 1.1(ggP)(2) and there is no prior day's Official Closing Price, the Exchange would not publish an Official Closing Price for such security.

The Exchange would use the hierarchy set forth in proposed Rule 1.1(ggP)(2)(B)–(E) only if the designated alternate exchange did not disseminate an official closing price in a security. In addition, the Exchange proposes to add as paragraph (E) of Rule 1.1(ggP)(2) what would happen if there were no Official Closing Price published on the prior trading day (*i.e.*, the Exchange would not publish an Official Closing Price). The Exchange believes not publishing an Official Closing Price would be a rare occurrence, and is most likely to occur for a thinly-traded security, such as a when issued security, right, or warrant, that has been listed for trading but does not have any consolidated last-sale eligible trades.

If the Corporation determines that it is impaired at or before 3:00 p.m. and the Official Closing Price for an Exchange-listed security is determined pursuant to proposed Rule 1.1(ggP)(2), the SIP would publish the Official Closing Price for such security no differently than how the SIP publishes the Official Closing Price for an Exchange-listed security pursuant to Rule 1.1(ggP)(1).[11] Accordingly, if the Official Closing Price is determined pursuant to proposed Rule 1.1(ggP)(2), recipients of SIP data would not have to make any changes to their systems because the SIP would publish the "M" last sale condition as an Exchange Official Closing Price for any impacted Exchange-listed securities.

As further proposed, Rule 1.1(ggP)(3) would describe how the Corporation would determine the Official Closing Price for a security if the Corporation determines after 3:00 p.m. Eastern Time that it is unable to conduct a Closing Auction in one or more NYSE Arca-listed securities due to a systems or technical issue. Based on input from market participants, the Exchange believes that, if the Exchange were to announce after 3:00 p.m. Eastern Time that it is impaired and unable to conduct a Closing Auction, market participants would not have sufficient time to re-direct closing-only orders to an alternate venue. Accordingly, in such scenario, the Exchange proposes to use the following hierarchy for determining the Official Closing Price for a security:

- Proposed Rule 1.1(ggP)(3)(A) would provide that the Official Closing Price would be the VWAP of the consolidated last-sale eligible prices of the last five minutes of trading during Core Trading Hours up to the time that the VWAP is processed, including any closing transactions on an exchange. The VWAP would take into account any trade breaks or corrections up to the time of [sic] the VWAP is processed. This VWAP would be calculated in the same manner as set forth in proposed in Rule 1.1(ggP)(2)(B), described above. However, if the Exchange's determination that it is unable to conduct a Closing Auction is after 3:00 p.m. ET, the proposed VWAP calculation would be the primary means for determining the Official Closing Price for a security. In such case, the Exchange believes that the VWAP would appropriately reflect the pricing of a security because it would include, in a volume-weighted manner, the price and volume of closing transactions on other exchanges if market participants are able to route closing interest in Exchange-listed securities to an alternate venue for participation in a closing auction.
- Proposed Rule 1.1(ggP)(3)(B) would provide that if there were no consolidated last-sale eligible trades in the last five minutes of trading during Core Trading Hours in such security, the Official Closing Price would be the last consolidated last-sale eligible trades [sic] during Core Trading Hours on that trading day. This proposed rule text is the same as proposed Rule 1.1(ggP)(2)(C).
- Proposed Rule 1.1(ggP)(3)(C) would provide that if there were no consolidated last-sale eligible trades in such security on a trading day, the Official Closing Price would be the prior day's Official Closing Price. This proposed rule text is the same as proposed Rule 1.1(ggP)(2)(D).
- Finally, proposed Rule 1.1(ggP)(3)(D) would provide that if an Official Closing Price for a security cannot be determined under (A), (B), or (C) of proposed Rule 1.1(ggP)(3) and there is no prior day's Official Closing Price, the Exchange would not publish an Official Closing Price for such security. This proposed rule text is based on proposed Rule 1.1(ggP)(2)(E).

Similar to how the Official Closing Price would be published under proposed Rule 1.1(ggP)(2), if the Exchange determines that it is impaired after 3:00 p.m. and the Official Closing Price is determined pursuant to proposed Rule 1.1(ggP)(3), the SIP would publish the Official Closing Price for such security no differently than how the SIP publishes the Official Closing Price for an Exchange-listed security pursuant to Rule 1.1(ggP)(1). Accordingly, if the Official Closing Price is determined pursuant to proposed Rule 1.1(ggP)(3), recipients of SIP data would not have to make any changes to their systems because the SIP would publish the "M" last sale condition as an Exchange Official Closing Price for any impacted Exchange-listed securities.

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[11] The Operating Committees of the CTA Plan, CQ Plan, and the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis approved the Impaired Market Contingency Plan under which the SIPs would print an impaired primary listing exchange's contingency Official Closing Price as the Official Closing Price of that primary listing exchange as provided for in the rules of respective primary listing exchanges.

For purposes of Rule 7.16P(f)(2) and determining whether to trigger a Short Sale Price Test under that rule, the Official Closing Price for Exchange-listed securities would still be determined based on Rule 1.1(ggP)(1). If the Exchange is impaired and cannot conduct a Closing Auction, similar to NYSE and NYSE MKT, the Official Closing Price as defined in proposed Rules 1.1(ggP)(2) and (3) would be used for purposes of determining whether a Short Sale Price Test is triggered under Rule 7.16P(f)(2) in an Exchange-listed security the next trading day.

Proposed Rule 1.1(ggP)(4) would provide that if the Exchange determines the Official Closing Price under paragraphs (2) or (3) of proposed Rule 1.1(ggP), the Exchange would publicly announce the manner by which it would determine its Official Closing Price and the designated alternate exchange, if applicable, and all open interest designated for the Exchange close residing in the NYSE Arca Marketplace would be deemed cancelled to give ETP Holders the opportunity to route their closing interest to alternate execution venues. This proposed rule would make clear that any determination that the Exchange would make under proposed Rules 1.1(ggP)(2) or (3) would be publicly announced so that market participants would have an opportunity to route their closing interest accordingly. In addition, the proposed rule change would make clear that any interest designated for the Exchange close, *i.e.*, MOC Orders and LOC Orders, would be cancelled by the Exchange so ETP Holders may route such interest to alternate execution venues.

To reflect that the Exchange could be designated as an alternate exchange by another primary listing market, the Exchange proposes to amend Rule 1.1(ggP)(1) to specify that the rule would be applicable to Auction-Eligible Securities, as defined in Rule 7.35P(a)(1), rather than only be applicable for securities listed on NYSE Arca. With this proposed change, if NYSE, NYSE MKT, or Nasdaq designate the Exchange as its designated alternate exchange under their respective back-up rules, Rule 1.1(ggP)(1) would govern how the Exchange would determine the Official Closing Price for Auction-Eligible Securities.

The Exchange also proposes to amend Rule 1.1(ggP)(1) to specify how the Exchange would determine the Official Closing Price for a security that has transferred its listing to the Exchange or is a new listing and does not have any consolidated last-sale eligible trades on its first day of trading on the Exchange. This proposed rule change is based on NYSE Rule 123C(1)(e)(i) and NYSE MKT Rule 123C(1)(e)(i)—Equities. As proposed, for a security that has transferred its listing to the Exchange and does not have any consolidated last-sale eligible trades on its first trading day, the Official Closing Price would be the prior day's closing price disseminated by the primary listing market that previously listed such security. In addition, for a security that is a new listing and does not have any consolidated last-sale eligible trades on its first trading day, the Official Closing Price would be based on a derived last sale associated with the price of such security before it begins trading on the Exchange. The Exchange believes the proposed rule text would provide transparency in Exchange rules of how the Exchange would determine the Official Closing Price for a security that has transferred its listing to the Exchange, and thus did not have a prior day's Official Closing Price on the Exchange, or is a new listing that did not have any trades on its first trading day.

Finally, the Exchange proposes to amend proposed Rule 1.1(ggP)(5) (which is current Rule 1.1(ggP)(2)) to clarify that this rule text would continue to specify how the Exchange would determine the Official Closing Price for UTP Securities for purposes of establishing Trading Collars if there is no consolidated last sale price on the same trading day, or Auction Reference Prices. For these purposes only, the Exchange would continue to use the official closing price as disseminated by the primary listing market for that security via a public data feed on a trading day for these purposes. The proposed change to the rule text is designed to make clear that the Exchange would continue to use the official closing price of the primary listing market as the Official Closing Price for UTP Securities for these specific purposes, while at the same time, providing for the Exchange to publish a "M" value for Auction-Eligible Securities based on an Official Closing Price determined pursuant to 1.1(ggP)(1), as proposed. In addition, if another primary listing market designates the Exchange as its designated alternate exchange under its official closing price rules, any Official Closing Price published by the Exchange in such securities would be published by the SIP as the official closing price of the primary listing exchange. Accordingly, proposed Rule 1.1(ggP)(5) would use that Official Closing Price as well.

To effect this amendment, the Exchange proposes to delete the phrase "For securities listed on an exchange other than NYSE Arca," and replace it with "For purposes of Rules 7.31P(a)(1)(B)(i) and 7.35P(a)(8)(A) for UTP Securities only". The remaining text of the rule would be unchanged. The Exchange believes that for UTP Securities, the official closing price as disseminated by the primary listing market would be a better price to use to determine the next day's Trading Collars or Auction Reference Price rather than using the Exchange-determined Official Closing Price under Rule 1.1(ggP)(1).

Because of the technology changes associated with this proposed rule change, the Exchange will implement the proposed back-up procedures for determining an Official Closing Price no later than 120 days after the operative date of this proposed rule change and will announce the implementation date via Trader Update.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide transparency in how the Exchange would determine the Official Closing Price in Exchange-listed securities when the Exchange is unable to conduct a Closing Auction due to a systems or technical issue. The Exchange believes that the proposed amendments would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed determination of an Official Closing Price was crafted in response to input from industry participants and would:

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[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

- Provide a pre-determined, consistent solution that would result in a closing print to the SIP within a reasonable time frame from the normal closing time;
- minimize the need for industry participants to modify their processing of data from the SIP; and
- provide advance notification of the applicable closing contingency plan to provide sufficient time for industry participants to route any closing interest to an alternate venue to participate in that venue's closing auction

More specifically, the Exchange believes the proposed hierarchy for determining the Official Closing Price if the Exchange determines that it is impaired at or before 3:00 p.m. Eastern Time would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposal, which is based on input from market participants and the approved rules of NYSE and NYSE MKT, would provide sufficient time for market participants to direct closing-only interest to a designated alternate exchange in time for such interest to participate in a closing auction on such alternate venue in a meaningful manner. The Exchange further believes that relying on the official closing price of a designated alternate exchange would provide for an established hierarchy for determining an Official Closing Price for an Exchange-listed security if there is insufficient interest to conduct a closing auction on the alternate exchange. In such case, the rules of Nasdaq already provide a mechanism for determining an official closing price for securities that trade on that market.

The Exchange further believes that if the Exchange determines after 3:00 p.m. that it is impaired and unable the conduct a Closing Auction, the proposed VWAP calculation would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide for a mechanism to determine the value of an affected security for purposes of determining an Official Closing Price. By using a volume-weighted calculation that would include the closing transactions on an affected security on alternate exchanges as well as any busts or corrections that were reported up to the time that the SIP calculates the value, the Exchange believes that the proposed calculation would reflect the correct price of a security. In addition, by using a VWAP calculation rather than the last consolidated last-sale eligible price as of the end of Core Trading Hours, the Exchange would reduce the potential for an anomalous trade that may not reflect the true price of a security from being set as the Official Closing Price for a security.

The Exchange further believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposal would have minimal impact on market participants. As proposed, from the perspective of market participants, even if the Exchange were impaired, the SIP would publish an Official Closing Price for Exchange-listed securities on behalf of the Exchange in a manner that would be no different than if the Exchange were not impaired. If the Exchange determines that it is impaired after 3:00 p.m., market participants would not have to make any system changes. If the Exchange determines that it is impaired before 3:00 p.m. Eastern Time and designates an alternate exchange, market participants may have to do systems work to re-direct closing-only orders to the alternate exchange. However, the Exchange understands, based on input from market participants, that such changes would be feasible based on the amount of advance notice. In addition, the Exchange believes that designating an alternate exchange when there is sufficient time to do so would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would allow for the price-discovery mechanism of a closing auction to be available for impacted Exchange-listed securities.

In addition, the Exchange believes that the proposed amendments to Rule 1.1(ggP)(1) would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rule change would enable the Exchange to serve as a designated alternate exchange under the respective rules of NYSE, NYSE MKT, or Nasdaq. Specifically, by expanding the reach of Rule 1.1(ggP)(1) to all Auction-Eligible Securities on the Exchange, and not just Exchange-listed securities, the hierarchy for determining an Official Closing Price specified in Rule 1.1(ggP) would be available to all securities that trade on the Exchange. Because the Exchange would be determining an Official Closing Price for UTP Securities under the proposed amendments to Rule 1.1(ggP)(1) for purposes of disseminating an "M" value to the SIPs, the Exchange further believes that the proposed amendments to Rule 1.1(ggP)(5) would be consistent with the protection of investors and the public interest by using the official closing price as determined by the primary listing market for UTP Securities for purposes of determining the next day's first Trading Collar (in the absence of a consolidated last sale price) or Auction Reference Price.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues, but rather to provide for how the Exchange would determine an Official Closing Price for Exchange-listed securities if it is impaired and cannot conduct a closing transaction due to a systems or technical issue. The proposal has been crafted with input from market participants, Nasdaq, and the SIPs, and is designed to reduce the burden on competition by having similar back-up procedures across all primary listing exchanges if such exchange is impaired and cannot conduct a closing auction.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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[14] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2016–94 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–94. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–94, and should be submitted on or before August 15, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17444 Filed 7–22–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78358; File No. SR–DTC–2016–004]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change To Establish a Link With Euroclear

July 19, 2016.

On June 3, 2016, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–DTC–2016–004 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] to establish a link ("EB Link") between DTC and Euroclear Bank SA/NV ("EB"). The proposed rule change was published for comment in the **Federal Register** on June 16, 2016.[3] The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description of the Proposed Rule Change

The following is a description of the proposed rule change, as provided primarily by DTC:

The proposed rule change consists of amendments to the Rules, By-Laws and Organization Certificate of The Depository Trust Company (the "Rules")[4] in order to add new Rule 34 (EB Link) to establish EB Link between DTC and EB for DTC Participants that are also EB participants ("CP Participants") to use Securities held at DTC for EB Collateral Transactions (as defined below). The proposed Rule 34 specifies the Accounts, Free Deliveries, and the terms and conditions that together comprise collateral positioning ("Collateral Positioning" or "CP") for CP Participants. The proposed rule change will: (i) Allow CP Participants to designate a sub-account for Collateral Positioning (a "CP Sub-Account") of Securities selected by the CP Participant (the "CP Securities") to Deliver to EB; and (ii) establish the Securities Account of EB (the "EB Account") on the books of DTC to receive and hold such CP Securities. DTC understands that EB will then credit such CP Securities to an account it maintains on its books for such CP Participant for use in transfers on the books of EB ("EB Collateral Transactions") in connection with EB's collateral management services ("EB CMS"), as described below.[5]

(i) Background

(a) New Regulations Require Better Access to and Management of Securities Collateral

New and enhanced regulatory requirements are leading derivative and financing counterparties to seek increased efficiency in the availability and deployment of collateral and streamlined margin processing. More specifically, the phase-in period of the Basel III liquidity rules,[6] as well as recent regulatory changes by the Commodity Futures Trading Commission,[7] the U.S. prudential regulators,[8] European Market Infrastructure Regulation,[9] and the Basel

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[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78031 (June 10, 2016), 81 FR 39303 (June 16, 2016) (SR–DTC–2016–004).

[4] Each capitalized term not otherwise defined herein has its respective meaning as set forth in the Rules, *available at http://www.dtcc.com/legal/rules-and-procedures.aspx.*

[5] On May 9, 2016, EB filed an application with the Commission on Form CA–1, seeking to amend its existing exemption from clearing agency registration by expanding its existing exemption to authorize EB to offer EB CMS to its U.S. participants for U.S. equities (the "EB CA–1 Amendment"). DTC understands that the EB CA–1 Amendment is necessary for EB to offer EB CMS, and consequently, the DTCC Euroclear Global Collateral Ltd. ("DEGCL") Inventory Management Service ("DEGCL IMS"), to U.S. participants for U.S. equities. Commission approval of this proposed rule change to add new Rule 34 (EB Link) will have no effect on the authority of EB pursuant to the EB CA–1 Amendment. In addition, this proposed rule change provides that it will not be implemented until the EB CA–1 Amendment is approved by the Commission.

[6] Basel Committee on Banking Supervision, Basel III: A global framework for more resilient banks and the banking system, December 2010 and revised June 2011; Basel Committee on Banking Supervision, Basel III: The Liquidity Coverage Ratio and liquidity risk monitoring tools, January 2013; Basel Committee on Banking Supervision, Basel III: The net stable funding ratio, October 2014, *available at www.bis.org/bcbs/basel3.htm.*

[7] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 635 (January 6, 2016); 17 CFR parts 23 and 140.

[8] Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840 (November 30, 2015); 12 CFR parts 45, 237, 349, 624 and 1221. The U.S. prudential regulators include: Office of the Comptroller of the Currency—Treasury, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Farm Credit Administration, and the Federal Housing Finance Agency.

[9] European Supervisory Authorities' (ESAs) Final Draft Regulatory Technical Standards on risk-

Committee on Banking Supervision ("BCBS") and the International Organization of Securities Commissions ("IOSCO"),[10] have resulted in increased capital requirements, mandatory central clearing of more derivatives transactions, and new margining rules for bilateral trades, driving a significant increased demand for high quality collateral.

These regulatory changes further include requirements for initial margin for counterparties as well as a reduction or removal of thresholds for variation margin.[11] It is expected that the inclusion of initial margin will significantly increase the amount of collateral required and will create additional margin calls by affected counterparties. In addition, it is expected that the removal or reduction of thresholds for variation margin will mean any changes in underlying valuations may trigger increased margin calls requiring market participants to hold additional collateral available for posting. Also, these regulatory changes include new restrictions on eligible collateral, requiring the use of highly liquid assets, prescribed haircuts, segregation requirements, as well as a prohibition on rehypothecation for initial margin. Given these forthcoming requirements, counterparties will need to access and deploy collateral more effectively.

(b) Proposed Rule Change Will Support DEGCL IMS

DEGCL is a United Kingdom ("UK") joint venture of DTCC and Euroclear S.A./N.V. ("Euroclear"), authorized by the Financial Conduct Authority ("FCA") in the UK as a "service company" [12] in accordance with applicable law of the UK. DEGCL was formed for the purpose of offering global information, record keeping, and processing services for derivatives collateral transactions and other types of financing transactions. DEGCL seeks to provide services to its users, including buy-side and sell-side financial institutions, in meeting their risk management and regulatory requirements for the holding and exchange of collateral, as required by these new regulatory requirements.

In particular, DEGCL IMS will address the increased demand for cross-border availability of securities collateral, some of which may be held at DTC. The purpose of DEGCL IMS is to offer to its users a more global view of their collateral assets and support cross-border mobility and to integrate information and record keeping for collateral use of Securities held at DTC and EB.

DEGCL IMS will be operated by EB and other entities in the Euroclear group, as the service provider to DEGCL, in accordance with appropriate agreements among these parties and in compliance with applicable regulatory requirements. There is no direct relationship between DTC and DEGCL IMS. DEGCL IMS will be offered to any financial institution that is both a DTC Participant and a participant of EB that has elected to use EB CMS ("EB Collateral Participant").

(ii) EB Link and Collateral Positioning Will Offer Global Collateral Mobility for Securities Held at DTC by CP Participants

The proposed rule change will establish the EB Link between DTC and EB through which a CP Participant could Deliver Securities from its Account to its CP Sub-Account and, from there, to the EB Account at DTC. The object is for EB to then credit the Securities to an account of the CP Participant on the books of EB for use in EB CMS.

For purposes of the EB Link, EB has become a Participant of DTC,[13] in order to establish the EB Account to which CP Securities will be credited. Accordingly, EB will act in two capacities: (i) On its own behalf as a Participant of DTC, to maintain the EB Account in which CP Securities may be held, so that EB may effect book entry transfers of those Securities on its own books and records; and (ii) on behalf of each CP Participant as the representative (the "CP Representative") of such CP Participant, to provide instructions to DTC on the CP Participant's behalf for the Delivery of CP Securities from the CP Sub-Account, and to receive certain information (x) once each Business Day, identifying the CP Securities that are credited to the CP Sub-Account at the time of the report (the "CP Securities Report"), and (y) that specified CP Securities have been Delivered into or out of the CP Sub-Account, and/or that an instruction has been given to DTC to Deliver specified CP Securities out of the CP Sub-Account, as applicable (the "Delivery Information").

The CP Participant will authorize EB as its CP Representative, to provide instructions on its behalf, and to receive the CP Securities Report and Delivery Information. Both the CP Securities Report and Delivery Information will include, with respect to the CP Securities specified therein, the following information: (i) The CUSIP, ISIN, or other identification number of the CP Securities; and (ii) the number of shares or other units or principal amount of the CP Securities.

The CP Participant will instruct DTC to Deliver the CP Securities from the CP Participant's Account to its CP Sub-Account. After the CP Securities have been credited to the CP Sub-Account, EB, as CP Representative, may instruct DTC to make a Free Delivery of the appropriate CP Securities from the CP Sub-Account to the EB Account.[14] All Deliveries from the CP Participant's Account to its CP Sub-Account and from the CP Sub-Account to the EB

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mitigation techniques for OTC-derivative contracts not cleared by a CCP under Article 11(15) of Regulation (EU) No 648/2012 (EMIR), *available at https://www.eba.europa.eu/documents/10180/1398349/RTS+on+Risk+Mitigation+Techniques+for+OTC+contracts+%28JC-2016-+18%29.pdf/fb0b3387-3366-4c56-9e25-74b2a4997e1d.*

[10] BCBS–IOSCO, Margin requirements for non-centrally cleared derivatives (March 2015), *available at http://www.bis.org/bcbs/publ/d317.htm.*

[11] Initial margin means money, securities, or property posted by a party to a swap as performance bond to cover potential future exposures arising from changes in the market value of the position. Variation margin means a payment made by or collateral posted by a party to a swap to cover the current exposure arising from changes in the market value of the position since the trade was executed or the previous time the position was marked to market. *See* 17 CFR 23.700.

[12] DEGCL was authorized as a "service company" by the FCA on March 29, 2016. A "service company," as defined in the FCA Handbook, Glossary, is: "[A] firm whose only permitted activities are making arrangements with a view to transactions in investments, and agreeing to carry on that regulated activity, and whose Part 4A permission: (a) Incorporates a limitation substantially to the effect that the firm carry on regulated activities only with market counterparties or intermediate customers; and (b) includes requirements substantially to the effect that the firm must not: (i) Guarantee, or otherwise accept responsibility for, the performance, by a participant in arrangements made by the firm in carrying on regulated activities, of obligations undertaken by that participant in connection with those arrangements; or (ii) approve any financial promotion on behalf of any other person or any specified class of persons; or (iii) in carrying on its regulated activities, provide services otherwise than in accordance with documents (of a kind specified in the requirement) provided by the firm to the FCA." FCA Handbook, Glossary, *available at https://www.handbook.fca.org.uk/handbook/glossary.*

[13] EB was accepted as a Participant on February 18, 2016. Upon approval of EB as a Participant, EB, like any other Participant, signed a Participant's Agreement pursuant to which it agreed, *inter alia,* that the DTC Rules shall be a part of the terms and conditions of every contract or transaction that EB may make or have with DTC, including the Regulation Systems Compliance and Integrity testing requirements set forth in DTC Rule 2 (Participants and Pledgees).

[14] EB will determine the eligibility of CP Securities for DEGCL IMS on the basis of the eligibility profile provided to DEGCL by its user counterparties, and subject to EB's securities eligibility rules.

Account will be Free Deliveries, subject to DTC risk management controls.[15]

After CP Securities have been credited to the EB Account, it will then be EB's responsibility to credit them to an account at EB maintained for the CP Participant, as an EB Collateral Participant. The originating CP Participant, as an EB Collateral Participant, may then choose to hold the CP Securities in an account at EB, pending use in any EB Collateral Transaction, or transfer the CP Securities on the books of EB to one or more other EB Collateral Participants in connection with EB Collateral Transactions.

EB may instruct DTC to Deliver CP Securities from the EB Account to the CP Sub-Account from which such CP Securities originated. This may occur if: (i) The CP Participant as a DEGCL IMS user changes its DEGCL IMS inventory profile in a way that renders the CP Securities credited to the EB Account no longer eligible for DEGCL IMS; (ii) the CP Participant submits a Delivery instruction for such CP Securities;[16] or (iii) the CP Securities are subject to a corporate action or tax event.[17]

EB may also instruct DTC to Deliver CP Securities from the EB Account to the Securities Account of a Participant that EB has designated as its global custodian ("EB Global Custodian").[18] The CP Securities held in the EB Account are held there exclusively for EB Collateral Transactions, so this proposed rule change will require EB to Deliver CP Securities from the EB Account to the Securities Account of the EB Global Custodian in connection with any liquidation of those CP Securities.

(iii) Proposed Rule Change

The proposed rule change will add Rule 34 to the DTC Rules, to provide for:

1. The establishment and maintenance of a CP Sub-Account for each CP Participant;
2. The establishment and maintenance of the EB Account for the purpose of Collateral Positioning Deliveries;
3. Free Deliveries of CP Securities by a CP Participant from an Account of the CP Participant to its CP Sub-Account, and back to (A) the originating Account of the CP Participant; (B) another Non-CP Account of the CP Participant; or (C) the Account of another Participant;
4. Free Deliveries of CP Securities as instructed by EB, as CP Representative of the CP Participant, from the CP Sub-Account of the CP Participant to the EB Account;
5. Free Deliveries of CP Securities as instructed by EB from the EB Account to (A) the CP Sub-Account from which such CP Securities originated, or (B) the Account of the EB Global Custodian;
6. Information to be provided by DTC to EB, as CP Representative of the CP Participant, specifically, the CP Securities Report and the Delivery Information;
7. The requirement that Deliveries provided in the proposed rule change must be Free Deliveries, and shall be subject to the terms and provisions of the DTC Rules and the Procedures applicable to the Deliveries of Securities, including DTC risk management controls; and
8. DTC's disclaimer of liability to: (A) Any CP Participant as a result of acting on instructions from EB or providing EB the Delivery Information or the CP Securities Report pursuant to Rule 34; (B) EB as a result of acting on instructions from a CP Participant pursuant to Rule 34; (C) EB or any CP Participant as a result of any loss relating to Rule 34, unless caused directly by DTC's gross negligence, willful misconduct, or violation of Federal securities laws for which there is a private rights of action; and (D) to any third party for any reason, including without limitation, DEGCL.

(iv) Implementation Timeframe

This proposed rule change will be implemented on the later of: (i) The date of Commission approval of this filing; and (ii) the date of a Commission order approving the EB CA–1 Amendment, authorizing EB to offer EB CMS to U.S. EB Collateral Participants for U.S. equities. Participants will be advised of the implementation date through the issuance of a DTC Important Notice.

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[19] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. The Commission believes that the proposal is consistent with Section 17A(b)(3)(F) of the Act[20] and Rule 17Ad–22(d)(7) thereunder,[21] as described in detail below.

(i) Consistency With Section 17A(b)(3)(F)

Section 17A(b)(3)(F) of the Act[22] requires, among other things, that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission understands that EB is currently an indirect Participant holding DTC Eligible Securities through one or more other financial institutions that are direct Participants. With this proposal, a direct link will be established between DTC and EB (*i.e.*, the EB Link), through which Participants can more directly deploy their securities collateral for EB Collateral Transactions. As such, transactions will be processed with EB more efficiently by eliminating a step in processing such transactions, thus promoting prompt and accurate transactions and the safeguarding of securities and funds in the custody or control of DTC, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F), cited above.

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[15] DTC risk management controls, including Collateral Monitor and Net Debit Cap (as defined in Rule 1, Section 1 of the DTC Rules, *supra* note 4), are designed so that DTC may complete system-wide settlement notwithstanding the failure to settle of its largest Participant or affiliated family of Participants. The Collateral Monitor tests whether a Receiver has adequate collateral to secure the amount of its net debit balance. The Net Debit Cap limits the Net Debit Balance of a Participant so that it cannot exceed DTC liquidity resources for settlement. Pursuant to these controls under applicable DTC Rules and Procedures, any Delivery instruction order to a CP Sub-Account that will cause the CP Participant to exceed its Net Debit Cap (which a Free Delivery should not) or to have insufficient DTC collateral to secure its obligations to DTC (which is possible), will not be processed by DTC. CP Deliveries will be processed in the same order and with the same priority as otherwise provided in the DTC Rules and Procedures (*i.e.*, such Deliveries will not take precedence over any other type of Delivery in the DTC system).

[16] If at any time a CP Participant has a pending instruction for Delivery of Securities that had been Delivered from its CP Sub-Account to the EB Account, DTC understands that EB will instruct DTC to Deliver those Securities from the EB Account back to the CP Sub-Account from which they originated.

[17] If EB does not Deliver the CP Securities back to the CP Sub-Account of the CP Participant prior to the applicable record date for a corporate action, the corporate action will be processed by DTC in the ordinary course to EB as the Participant holding the Securities on the Record Date.

[18] EB has not been a direct DTC Participant or had a Securities Account at DTC prior to this proposed EB Link; EB has held Eligible Securities only as an indirect participant through a bank that it characterizes as its "global custodian" and that is a DTC Participant. The EB Link is proposed to be established for, and expressly limited to, Collateral Positioning in connection with EB Collateral Transactions. EB may continue to use the EB Global Custodian for other EB transactions and to hold non-CP Securities indirectly at DTC.

[19] 15 U.S.C. 78s(b)(2)(C).

[20] 15 U.S.C. 78q–1(b)(3)(F).

[21] 17 CFR 240.17Ad–22(d)(7).

[22] 15 U.S.C. 78q–1(b)(3)(F).

(ii) Consistency With Rule 17Ad–22(d)(7)

Rule 17Ad–22(d)(7) under the Act[23] requires a clearing agency, such as DTC, to establish, implement, maintain and enforce written policies and procedures reasonably designed to evaluate the potential sources of risks that can arise when the clearing agency establishes links either cross-border or domestically to clear or settle trades, and ensure that the risks are managed prudently on an ongoing basis.[24] In developing the proposed EB Link, DTC stated that it evaluated the risks that could arise by establishing a link with EB, a foreign central securities depository. DTC stated that it determined that all Deliveries between CP Sub-Accounts and the EB Account will be subject to DTC risk management controls and will be limited to Free Deliveries. Therefore, there should be minimum risk, in particular, no funds settlement risk, associated with EB Link.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[25] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that proposed rule change SR–DTC–2016–004 be, and hereby is, *approved.*[26]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17445 Filed 7–22–16; 8:45 am]

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[23] 17 CFR 240.17Ad–22(d)(7).

[24] 17 CFR 240.17Ad–22(d)(7).

[25] 15 U.S.C. 78q–1.

[26] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78361; File No. SR–BX–2016–043]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Adjustments to Its Options Regulatory Fee

July 19, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 6, 2016, NASDAQ BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make adjustments to its Options Regulatory Fee ("ORF") by amending BX Rules at Chapter XV, Section 5.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on August 1, 2016.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to increase the ORF from $0.0003 to $0.0004 as of August 1, 2016 to account for a reduction in market volume the Exchange has experienced. The Exchange's change to the ORF should balance the Exchange's regulatory revenue against the anticipated revenue [sic].

Background

The ORF is assessed to each member for all options transactions executed or cleared by the member that are cleared at The Options Clearing Corporation ("OCC") in the Customer range (*i.e.,* that clear in the Customer account of the member's clearing firm at OCC). The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed regulatory costs. The ORF is imposed upon all transactions executed by a member, even if such transactions do not take place on the Exchange.[3] The ORF also includes options transactions that are not executed by an Exchange member but are ultimately cleared by an Exchange member.[4] The ORF is not charged for member proprietary options transactions because members incur the costs of owning memberships and through their memberships are charged transaction fees, dues and other fees that are not applicable to non-members. The dues and fees paid by members go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation. The ORF is collected indirectly from members through their clearing firms by OCC on behalf of the Exchange.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The ORF applies to all "C" account origin code orders executed by a members on the Exchange. Exchange Rules require each member to record the appropriate account origin code on all orders at the time of entry in order to allow the Exchange to properly prioritize and route orders and assess transaction fees pursuant to the Rules of the Exchange and report resulting transactions to OCC. The Exchange represents that it has surveillances in place to verify that members mark orders with the correct account origin code.

[4] In the case where one member both executes a transaction and clears the transaction, the ORF is assessed to the member only once on the execution. In the case where one member executes a transaction and a different member clears the transaction, the ORF is assessed only to the member who executes the transaction and is not assessed to the member who clears the transaction. In the case where a non-member executes a transaction and a member clears the transaction, the ORF is assessed to the member who clears the transaction.

The ORF is designed to recover a portion of the costs to the Exchange of the supervision and regulation of its members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission.

ORF Adjustments

The Exchange is proposing to increase the ORF from $0.0003 to $0.0004 as of August 1, 2016. In light of recent market volumes, the Exchange proposes to change the amount of ORF that will be collected by the Exchange. The Exchange regularly reviews its ORF to ensure that the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs. The Exchange believes this adjustment will permit the Exchange to cover a material portion of its regulatory costs, while not exceeding regulatory costs.

The Exchange notified members of this ORF adjustment thirty (30) calendar days prior to the proposed operative date.[5]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that increasing the ORF from $0.0003 to $0.0004 as of August 1, 2016 is reasonable because the Exchange's collection of ORF needs to be balanced against the amount of regulatory revenue collected by the Exchange. The Exchange believes that the proposed adjustments noted herein will serve to balance the Exchange's regulatory revenue against the anticipated regulatory costs. It is further reasonable because this adjustment results in a price increase. While these adjustments result in an increase, the increase is modest and within the range of ORFs assessed by other options exchanges.

The Exchange proposes to amend the ORF from $0.0003 to $0.0004 as of August 1, 2016 is [sic] equitable and not unfairly discriminatory because this adjustment would be applicable to all members on all of their transactions that clear as Customer at OCC. In addition, the ORF seeks to recover the costs of supervising and regulating members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities.

The ORF is not charged for member proprietary options transactions because members incur the costs of owning memberships and through their memberships are charged transaction fees, dues and other fees that are not applicable to non-members. Moreover, the Exchange believes the ORF ensures fairness by assessing higher fees to those members that require more Exchange regulatory services based on the amount of Customer options business they conduct.

Regulating Customer trading activity is more labor intensive and requires greater expenditure of human and technical resources than regulating non-Customer trading activity. Surveillance, regulation and examination of non-Customer trading activity generally tends to be more automated and less labor intensive. As a result, the costs associated with administering the Customer component of the Exchange's overall regulatory program are anticipated to be higher than the costs associated with administering the non-Customer component of its regulatory program. The Exchange proposes assessing higher fees to those members that will require more Exchange regulatory services based on the amount of Customer options business they conduct.[8] Additionally, the dues and fees paid by members go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation. The Exchange believes that the proposed ORF is a small cost for Customer executions. The Exchange has in place a regulatory structure to surveil for, examine and monitor the marketplace for violations of Exchange Rules. The ORF assists the Exchange to fund the cost of this regulation of the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. [sic] In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The Exchange does not believe that increasing its ORF creates an undue burden on intra-market competition because the adjustment will apply to all members on all of their transactions that clear as Customer at OCC. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs. Additionally, the dues and fees paid by members go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation. The Exchange's members are subject to ORF on other options markets.[9]

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[5] *See* Options Trader Alert #2016–16.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] The ORF is not charged for orders that clear in categories other than the Customer range at OCC (*e.g.,* BX Options Market Maker orders) because members incur the costs of memberships and through their memberships are charged transaction fees, dues and other fees that go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation.

[9] The following options exchanges assess an ORF: Chicago Board Options Exchange, Incorporated (''CBOE''), C2 Options Exchange, Inc. (''C2''), the International Securities Exchange, LLC (''ISE''), NYSE Arca, Inc. (''NYSEArca'') and NYSE AMEX LLC (''NYSEAmex''), BATS Exchange, Inc.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2016–043 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2016–043. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2016–043, and should be submitted on or before August 15, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17448 Filed 7–22–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78354; File No. SR–NASDAQ–2016–102]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Nasdaq Rule 7018

July 19, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 13, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq is proposing changes to amend Nasdaq Rule 7018(a) to: (i) Amend the consolidated volume ("Consolidated Volume") requirement for a credit tier for providing liquidity in securities of all three Tapes; (ii) delete a credit tier for providing liquidity in securities of all three Tapes; and (iii) provide a new credit for providing liquidity in securities of all three Tapes.

The text of the proposed rule change is available at *nasdaq.cchwallstreet.com,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend certain credits for the use of the order execution and routing services of the Nasdaq Market Center by members for all securities priced at $1 or more that it trades.

Specifically, the Exchange proposes to amend Nasdaq Rule 7018(a)(1), (2), and (3) to: (i) Amend the Consolidated Volume requirement for a credit tier for providing liquidity in securities of all three Tapes;[3] (ii) delete a credit tier for providing liquidity in securities of all three Tapes; and (iii) provide a new credit for providing liquidity in securities of all three Tapes.

First Change

The purpose of the first change is to increase the Consolidated Volume requirement for accessing liquidity in an existing credit tier. Currently, the credit tier requires a member to access more than 0.65% of Consolidated Volume through one or more of its Nasdaq Market Center MPIDs, provided that the member also provides a daily average of

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("BATS") and The NASDAQ Options Market LLC ("NOM").

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] There are three Tapes, which are based on the listing venue of the security: Tape C securities are Nasdaq-listed; Tape A securities are New York Stock Exchange ("NYSE")-listed; and Tape B securities are listed on exchanges other than Nasdaq and NYSE.

at least 2 million shares of liquidity in all securities during the month. The Exchange is proposing to increase the required Consolidated Volume requirement to more than 0.80%. The current credit will remain as $0.0029 per share executed. The Consolidated Volume requirement will be increased as stated above for all three Tapes.

Increasing the Consolidated Volume criteria will require members to access more liquidity to receive the $0.0029 per share executed credit tier, but the Exchange believes that the members that want to avail themselves of this credit tier will be able to meet the increased Consolidated Volume requirement. Increasing the amount of liquidity accessed should be beneficial to other members as more of their resting limit orders may be accessed by members seeking to attain this credit tier.

Second Change

The purpose of the second change is to delete the credit tier of $0.0030 per share executed for a member with shares of liquidity provided in all securities during the month representing more than 0.20% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs and that qualifies for the additional $0.05 per contract credit under Note c(3) of Nasdaq Options Market ("NOM") Chapter XV Section 2(1) in securities of all three Tapes.

No market participants qualified for this credit tier recently, thus rendering it ineffective as acting as an incentive. However, since the Exchange is limited in the amount of credits that it can provide to market participants and even though no market participants currently qualify for this credit tier, this can easily shift from month to month so Nasdaq is proposing to delete it. Nasdaq must be selective in providing credits to members, and allocates credits to where it believes it will receive the best result in terms of improvement to market quality. The Exchange believes that eliminating this credit tier for all three Tapes is the only way to ensure that it will not going forward impact the overall balance of credits and fees.

Third Change

The purpose of the third change is to provide an additional credit to members that provide liquidity. Currently, the Exchange provides several credits under Rules 7018(a)(1), (2), and (3), each of which apply to securities of a different Tape, in return for market-improving behavior. The Exchange is proposing to add a new credit tier of $0.0027 per share executed for a member that has shares of liquidity provided in all securities during the month representing more than 0.10% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs, and that adds Customer,[4] Professional,[5] Firm,[6] Non-NOM Market Maker[7] and/or Broker-Dealer[8] liquidity in Non-Penny Pilot Options of 0.40% or more of total industry average daily volume ("ADV") in the customer clearing range for Equity and exchange-traded fund ("ETF") option contracts per day in a month on the NOM.

As a general principle, the Exchange chooses to offer credits to members in return for market improving behavior. Under Rule 7018(a), the various credits the Exchange provides for members require them to significantly contribute to market quality by providing certain levels of Consolidated Volume through one or more of its Nasdaq Market Center MPIDs, and volume on NOM. The Exchange believes that by adding more in Non-Penny names on NOM that the market for these options on NOM will improve and the Exchange seeks to encourage such behavior.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

First Change

The Exchange believes that this proposed amendment to the requirements of an existing credit tier provided in securities of all three Tapes is reasonable because it amends a measure of activity with another, both of which represent a significant contribution to that market. Specifically, the Exchange is increasing the requirement that a member with shares of liquidity accessed in all securities through one or more of its Nasdaq Market Center MPIDs representing more than 0.65% of Consolidated Volume during the month. The Exchange is proposing to increase the monthly Consolidated Volume requirement from more than 0.65% to more than 0.80%. The member must also provide a daily average of at least 2 million shares of liquidity in all securities through one or more of its Nasdaq Market Center MPIDs during the month along with the required shares of liquidity accessed.

The Exchange believes that the proposed amendment to the requirements of an existing credit tier provided in securities of all three Tapes is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same $0.0029 per share executed credit to all similarly situated members. Thus, if a member meets the requirements, it will receive the credit. Also, and as previously discussed, Nasdaq believes that although increasing the Consolidated Volume criteria will require members to access more liquidity to receive the $0.0029 per share executed credit tier, members seeking to achieve this credit tier will be able to meet the increased Consolidated Volume requirement. Increasing the amount of liquidity accessed should be beneficial to other members as their resting limit orders may be accessed by members seeking to attain this credit tier.

Second Change

The Exchange believes that the proposed changes to delete a credit tier for a member with shares of liquidity provided in all securities during the month representing more than 0.20% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs and that qualifies for the additional $0.05 per contract credit under Note c(3) of NOM Chapter XV Section 2(1) in securities of all three Tapes is reasonable because the Exchange must, from time to time, adjust the level of credits provided, and the criteria required to receive them, to provide the most efficient allocation of credits in terms of market improving behavior.

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[4] The term "Customer" or ("C") applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Chapter I, Section 1(a)(48)).

[5] The term "Professional" or ("P") means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants.

[6] The term "Firm" or ("F") applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

[7] The term "NOM Market Maker" or ("M") is a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

[8] The term "Broker-Dealer" or ("B") applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

Specifically, with regard to the eliminated $0.0030 per share executed credit tier, as discussed previously, Nasdaq observed that no market participants qualified for this credit tier recently, thus rendering it ineffective as acting as an incentive. The Exchange is limited in the amount of credits that it can provide to market participants so even though no market participants currently qualified for this credit tier, this can easily shift from month to month. Nasdaq must be selective in providing credits to members, and allocates credits to where it believes it will receive the best result in terms of improvement to market quality. The Exchange believes that it is reasonable to eliminate this credit tier as the only way to ensure that it will not going forward impact the overall balance of credits and fees.

The Exchange believes that the proposed change to delete the credit tier described above in Rule 7018(a) is an equitable allocation and is not unfairly discriminatory because the Exchange will eliminate the same credit for all similarly situated members. The credits Nasdaq provides are designed to improve market quality for all market participants, and Nasdaq allocates its credits in a manner that it believes are the most likely to achieve that result. Elimination of the existing credit tier under the rule is an equitable allocation and is not unfairly discriminatory because no participants qualified under this credit tier, therefore, its elimination will not impact any members.

Third Change

The Exchange believes that the proposed rule change to add a new credit tier of $0.0027 per share executed is reasonable because it is consistent with other credits that the Exchange provides to members that provide liquidity. As discussed previously, as a general principle the Exchange chooses to offer credits to members in return for market improving behavior. Under Rule 7018(a), the various credits the Exchange provides for members require them to significantly contribute to market quality by providing certain levels of Consolidated Volume through one or more of its Nasdaq Market Center MPIDs, and volume on NOM. The proposed credit will be provided to members that not only contribute to the Exchange by providing more than 0.10% of Consolidated Volume through one or more of its Nasdaq Market Center MPIDs during the month, but also adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Non-Penny Pilot Options of 0.40% or more of total industry ADV in the customer clearing range for Equity and ETF option contracts per day in a month on the NOM.

The Exchange believes that the proposed new credit tier is reasonable because although it provides for a lower credit than some other NOM-linked credit tiers, it also has a corresponding lower Consolidated Volume threshold of 0.10%. Also, the proposed new credit tier specifically requires adding liquidity in Non-Penny Pilot Options.[11] Currently, the credit tier referencing the NOM fee schedule that is being deleted in the Second Change (described above) also has a Non-Penny liquidity component as part of the criteria, so using liquidity in Non-Penny Pilot Options as a tiering criteria is not novel.

The Exchange believes that the proposed $0.0027 per share executed credit is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same credit to all similarly situated members. Thus, if a member meets the requirements, it will receive the credit. A member achieving this credit tier will be providing liquidity in less liquid options classes (*i.e.,* Non-Penny names). The Exchange believes that by adding more in Non-Penny names on NOM that the market for these options on NOM will improve and the Exchange seeks to encourage such behavior.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the changes to the credits provided for the use of the order execution and routing services of the Nasdaq Market Center by members for all securities priced at $1 or more that it trades are reflective of the intense competition among trading venues in capturing order flow. Moreover, the proposed changes do not impose a burden on competition because Exchange membership is optional and is also the subject of competition from other trading venues. For these reasons, the Exchange does not believe that any of the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Moreover, because there are numerous competitive alternatives to the use of the Exchange, it is likely that the Exchange will lose market share as a result of the changes if they are unattractive to market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[12] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

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[11] *See* NOM Chapter XV, Note c(3)(b) to Section 2(1), which also supports members to add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Non-Penny Pilot Options.

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2016–102 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–102. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–102, and should be submitted on or before August 15, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17443 Filed 7–22–16; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 14775 and # 14776]

Oklahoma Disaster # OK–00105

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oklahoma (FEMA–4274–DR), dated 07/15/2016.

Incident: Severe Storms and Flooding.

Incident Period: 06/11/2016 through 06/13/2016.

Effective Date: 07/15/2016.

Physical Loan Application Deadline Date: 09/13/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 04/17/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/15/2016, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Caddo; Comanche; Cotton; Garvin; Grady; Stephens.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere:	2.625
Non-Profit Organizations Without Credit Available Elsewhere:	2.625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere:	2.625

The number assigned to this disaster for physical damage is 14775B and for economic injury is 14776B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Lisa Lopez-Suarez,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2016–17454 Filed 7–22–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Military Reservist Economic Injury Disaster Loans Interest Rate for Fourth Quarter FY 2016

In accordance with the Code of Federal Regulations 13—Business Credit and Assistance § 123.512, the following interest rate is effective for Military Reservist Economic Injury Disaster Loans approved on or after July 22, 2016.

Military Reservist Loan Program 4.000%.

Dated: July 15, 2016.

Lisa Lopez Suarez,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2016–17467 Filed 7–22–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2016–85]

Petition for Exemption; Summary of Petition Received; Florida Air Transport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before August 15, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–7045 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building

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[13] 17 CFR 200.30–3(a)(12).

Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Brent Hart (202) 267–4034, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on July 14, 2016.

Dale Bouffiou,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2016–7045.

Petitioner: Florida Air Transport.

Section(s) of 14 CFR Affected: 91.529(a) and (b); 125.265(a) and (b).

Description of Relief Sought: Florida Air Transport wants to allow company flight engineers (FEs) to maintain currency in Douglas DC–6 airplanes, using an Events Based Currency (EBC) program rather than obtaining 50 hours of operating experience or completing a competency check every 6 months.

[FR Doc. 2016–17430 Filed 7–22–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2016–66]

Petition for Exemption; Summary of Petition Received; AirNet II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before August 15, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–3686 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alphonso W. Pendergrass II, (202) 267–4713, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on July 14, 2016.

Dale Bouffiou,

Deputy Director, Office of Rulemaking.

Petition For Exemption

Docket No.: FAA–2016–3686.

Petitioner: AirNet II, LLC.

Section(s) of 14 CFR Affected: 61.51(f)(2).

Description of Relief Sought: AirNet II, LLC seeks relief to allow AirNet II, LLC (AirNet) to assign a properly trained and qualified second in command (SIC) during a flight that otherwise does not require a SIC and to also allow the SIC to log that flight time. AirNet II, LLC also request this relief be extended to its operations outside of the United States.

[FR Doc. 2016–17429 Filed 7–22–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Transportation Projects in Florida

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation of Claims for Judicial Review of Actions by FHWA, U.S. Army Corps of Engineers (USACE), and Other Federal Agencies.

SUMMARY: This notice announces actions taken by FHWA and other Federal Agencies since September 17, 2014, that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to the proposed SR–20 (from US–301 to CR–315) in Alachua and Putnam Counties; Pensacola Bay Bridge, SR–30 (US–98, from 17th Avenue to Baybridge Drive) in Escambia and Santa Rosa Counties; Anna Maria Island Bridge, SR–64 (Manatee Avenue) (from west of SR–789 (East Bay Drive) to east of Perico Bay Blvd.) in Manatee County; Capital Circle SW (SR–263), (from US–319 (SR–61) (Crawfordville Highway) to SR–20 (Blountstown Highway) in Leon County, SR 90/Tamiami Trail (US Highway 41) in Miami-Dade County, Palm Bay Parkway Southern Interchange at I–95 in Brevard County, SR 710 (from SR 76 to Blue Heron Blvd. at I–95) in Martin and Palm Beach Counties, and US 301 (from CR 227 to CR 233) in Starke, Bradford County in the State of Florida. These actions grant licenses, permits, and approvals for the projects.

DATES: By this notice, FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the listed highway projects will be barred unless the claim is filed on or before December 22, 2016. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Ms. Cathy Kendall, AICP, Senior Environmental Specialist, FHWA Florida Division, 3500 Financial Plaza, Suite 400, Tallahassee, Florida 32312; telephone: (850) 553–2225; email: *cathy.kendall@dot.gov* . The FHWA Florida Division Office's normal business hours are 7:30 a.m. to 4:00 p.m. (Eastern Standard Time), Monday through Friday, except Federal holidays. For USACE: Mr. Andrew A. Kizlauskas, Chief, Panama City Permitting Section, U.S. Army Corps of Engineers, Panama City Regulatory Office, 1002 West 23rd Street, Suite 350, Panama City, Florida 32405; telephone: (850) 763–0717, Ext. 23; email: *Andrew.A.Kizlauskas@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA and other Federal Agencies have taken final agency action by issuing licenses, permits, and approvals for the projects listed below. The actions by the Federal agencies on a project, and the laws under which such actions were taken, are described in the documented environmental assessment (EA) or environmental impact statement (EIS) issued in connection with the project, and in other project records for the listed projects. The EA or FEIS, Record of Decision (ROD), and other documents from FHWA and other Federal Agency project records for the listed projects are available by contacting the FHWA or by using the links provided below.

This notice applies to all Federal agency decisions by issuing licenses, permits, and approvals as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351; Federal-Aid Highway Act (FAHA) [23 U.S.C. 109 and 23 U.S.C. 128].

2. *Air:* Clean Air Act (CAA), 42 U.S.C. 7401–7671(q).

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 (4f) [49 U.S.C. 303 and 23 U.S.C. 138].

4. *Wildlife:* Endangered Species Act (ESA) [16 U.S.C. 1531–1544 and 1536]; Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d); Migratory Bird Treaty Act (MBTA) [16 U.S.C. 703–712]; Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended (106) [16 U.S.C. 470(f) *et seq.*]; Archaeological Resources Protection Act of 1977 (ARPA) [16 U.S.C. 470(aa)–470(II)]; Archaeological and Historic Preservation Act (AHPA) [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 (Civil Rights) [42 U.S.C. 20009(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1377]; Coastal Barriers Resources Act (CBRA) [16 U.S.C. 3501 *et seq.*]; Coastal Zone Management Act (CZMA) [16 U.S.C. 1451–1465]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; Wetlands Mitigation, [23 U.S.C. 103(b)(6)(M) and 103(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

The projects subject to this notice are:

1. *Project Location:* Alachua and Putnam Counties, SR–20 (from US–301 to CR–315), Federal Project No: XA–400–1(43). Project type: The project will widen SR–20 from a two-lane rural roadway to a four-lane urban divided roadway from East of US–301 in the Town of Hawthorne to CR–315 in the Town of Interlachen. Corps Nationwide Permit verification 14 SAJ–2015–00890 issued 6 May 2015 (DOT–2–FPN 207818–2–52–01–SR20 Bridge/Culvert Replacement). The actions by FHWA and the laws under which such actions were taken are described in the Environmental Assessment (EA) and in the Finding of No Significant Impact (FONSI) issued on March 17, 2015, and are available by contacting Mr. Stephen Browning, PE., Project Development Engineer, Planning and Environmental Management Office, Mail Station 2007, 1109 South Marion Avenue, Lake City, Florida 32025, Phone Number: (386) 961–7455, Email Address: *Stephen.Browning@dot.state.fl.us.*

2. *Project Location:* Escambia and Santa Rosa Counties, Pensacola Bay Bridge, SR–30 (US–98) from 17th Avenue to Baybridge Drive), Federal Project No: 4221–078–P. Project type: The project involves the replacement of the existing 4-lane Pensacola Bay Bridge with a 6-lane bridge. The actions by FHWA and the laws under which such actions were taken are described in the EA and in the Finding of No Significant Impact (FONSI) issued on May 5, 2015, and are available at *http://www.pensacolabaybridge.com/.* Corps Regional General Permit 92 verification issued 30 March 2016 (DOT–3–FPN 413062–3–32–01–Section 2, SR 8 (I–10) from Escambia Bay Bridge to east of SR 281).

3. *Project Location:* Manatee County, Anna Maria Island Bridge, SR–64 (Manatee Avenue) from west of SR–789 (East Bay Drive) to east of Perico Bay Blvd., Federal Project No: 424436–1–21–01. Project type: The project involves the replacement of the existing two-lane double-leaf bascule Anna Maria Island Bridge (Bridge Number 130054) with a two-lane high rise fixed-span bridge on SR–64 (Manatee Avenue) crossing the Gulf Intracoastal Waterway. The actions by FHWA and the laws under which such actions were taken are described in the EA and in the Finding of No Significant Impact (FONSI) issued on January 15, 2016, and are available at *http://www.annamariaislandbridge.com/.*

4. *Project Location:* Leon County, Capital Circle SW (SR–263), (from US–319 (SR–61) (Crawfordville Highway) to SR–20 (Blountstown Highway), Financial Project No: 415782–4. Project type: This project involves widening the existing roadway from 2-lanes to 6-lanes. The actions by FHWA and the laws under which such actions were taken are described in the EA and in the Finding of No Significant Impact (FONSI) issued on January 14, 2016, and are available at *http://blueprint2000.org/projects/capital-circle/.*

5. *Project Location:* Miami-Dade County, SR 90/Tamiami Trail (US Highway 41). Project Type: The project will implement roadway modifications

to restore more natural water flow to Everglades National Park and Florida Bay for the purpose of restoring habitat within the Park and ecological connectivity between the Park and Water Conservation Areas. The project limits are between milepost 13.87 and 24.62 (west of Krome Avenue). This project will not add through lanes. The project will remove approximately 5.5 miles of existing 2-lane roadway fill embankment and construct an equal length of 2-lane bridging to replace the removed embankment. Remaining roadway and fill embankment will be slightly raised in elevation. Corps Individual Permit SAJ–2014–01231 issued April 6, 2015, and is available at *http://geo.usace.army.mil/egis/f?p=340:9:0::NO.*

6. *Project Location:* Brevard County, Palm Bay Parkway Southern Interchange at I–95. Financial Project No: 426904–1–22–01 and 426904–1–22–02. Project Type: The project builds a new interchange that will directly connect the Palm Bay Parkway and Micco Road to I–95 just south of the City of Palm Bay in Brevard County. Corps Individual Permit SAJ–2009–01907 issued February 4, 2016, (DOT–5–FPN–426904–1–22–01), and is available at *http://geo.usace.army.mil/egis/f?p=340:9:0::NO.*

7. *Project Location:* Martin and Palm Beach Counties, SR 710 (from SR 76 to Blue Heron Blvd. at I–95). Project type: Adds capacity to SR 710 and provides a new urban interchange at Northlake Boulevard. Corps Individual Permit SAJ–2013–02593 issued September 17, 2014, and is available at *http://geo.usace.army.mil/egis/f?p=340:9:0::NO.*

8. *Project Location:* Starke, Bradford County, US 301 (from CR 227 to CR 233). Project type: Provides a 4 lane, limited-access 7.3 mile bypass around the City of Starke. Corps Individual Permit SAJ–2013–00113 issued March 4, 2016 (DOT–2–FPN 208001), and is available at *http://geo.usace.army.mil/egis/f?p=340:9:0::NO.*

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1)

James C. Christian,

Division Administrator, Federal Highway Administration, Tallahassee, Florida.

[FR Doc. 2016–17110 Filed 7–22–16; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0347]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 28 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions were granted February 12, 2016. The exemptions expire on February 12, 2018.

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On January 12, 2016, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (81 FR 1474). That notice listed 28 applicants' case histories. The 28 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 28 applications on their merits and made a determination to grant exemptions to each of them.

III. Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

> A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 28 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including age-related macular degeneration, amblyopia, complete loss of vision, corneal scar, embryonic cataract, macular scar, optic atrophy, optic nerve damage, prosthetic eye, reduced vision, refractive amblyopia, retinal detachment, and strabismic amblyopia. In most cases, their eye conditions were not recently developed. Nineteen of the applicants were either born with their vision impairments or have had them since childhood.

The 9 individuals that sustained their vision conditions as adults have had it for a range of 6 to 44 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 28 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision in careers ranging for 3 to 59 years. In the past three years, no drivers were involved in crashes, and 3 drivers were convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the January 12, 2016 notice (81 FR 1474).

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 28 applicants, no drivers were involved in crashes, and 3 drivers were convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 28 applicants listed in the notice of January 12, 2016 (81 FR 1474).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 28 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

V. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based upon its evaluation of the 28 exemption applications, FMCSA exempts the following drivers from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)):

David W. Anderson (OR)
Charles H. Baim (PA)
Troy C. Blackburn (OH)
Johnnie E. Byler (PA)
Raymond E. Catanio (NJ)
Dana L. Colberg (OR)
Peter D. Costas (NY)
Darrin G. Davis (WI)
Rene Hernandez Gonzalez (FL)
Johnnie W. Hines, Jr. (FL)
Dean L. Knutson (SD)
Melvin L. Lester (MS)
Gerald R. Metzler (PA)
Kory M. Nelson (MD)
Douglas L. Peterson (WI)
Ramon S. Puente (IA)
Dennis W. Rhoades (VT)
Jose H. Rivas (NM)
Joseph T. Saba (MN)
LeRoy W. Scharkey (MN)
Roger H. Schwisow (NE)
Walton W. Smith, Jr. (VA)
Dustin W. Tharp (IA)
Aaron D. Tillman (DE)
Larry J. Weber (WI)
Richard N. Wescott (ME)
Oscar M. Wilkins (ME)
Rodney W. Wright (PA)

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: July 19, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–17458 Filed 7–22–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0370]

Hours of Service of Drivers: U.S. Department of Energy (DOE); FAST Act Extension of Expiration Date

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; extension of exemption.

SUMMARY: FMCSA announces the extension of the hours-of-service (HOS) exemption granted to the U.S. Department of Energy (DOE) on June 30, 2015, for certain commercial motor vehicle (CMV) drivers. The Agency extends the expiration date of the exemption to June 29, 2020 in response to section 5206(b)(2)(A) of the "Fixing America's Surface Transportation Act" (FAST Act). That section extends the expiration date of all HOS exemptions in effect on the date of enactment to 5 years from the date of issuance of the exemptions. The DOE exemption from the Agency's 30-minute rest break requirement is limited to DOE's contract motor carriers and their employee-drivers engaged in the transportation of security-sensitive radioactive materials. The Agency previously determined that CMV operations under this exemption would likely achieve a level of safety equivalent to or greater than the level of safety that would be obtained in the absence of the exemption.

DATES: This limited exemption is effective from June 30, 2015, through June 29, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 614–942–6477. Email: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** [49 CFR 381.315(a)].

Section 5206(b)(2)(A) of the FAST Act requires FMCSA to extend all exemptions from the HOS regulations (49 CFR part 395) that were in effect on the date of enactment of the Act to a period of 5 years from the date the exemption was granted. The exemption may be renewed. Because this action merely implements a statutory mandate that took effect on the date of enactment of the FAST Act, notice and comment are not required.

DOE Exemption

From 2013 to 2015, DOE held a limited exemption from the mandatory 30-minute rest break requirement of 49 CFR 395.3(a)(3)(ii) that allowed DOE contract carriers and their drivers transporting security-sensitive radioactive materials to be treated the same as drivers transporting explosives pursuant to § 395.1(q). As that exemption neared expiration, DOE applied for its renewal.

FMCSA reviewed DOE's request and the public comments and reaffirmed its previous conclusion that allowing these drivers to count on-duty time "attending" their CMVs toward the required 30-minute break, would promote safety at least as effectively as the break itself. The notice renewing the DOE exemption was published on June 22, 2015 [80 FR 35703].

The substance of the 2015 exemption is not affected by this extension. The DOE exemption covers only the 30-minute break requirement [49 CFR 395.3(a)(3)(ii)] and is restricted to contract motor carriers and their drivers employed by DOE transporting security-sensitive radioactive materials. On each trip, the drivers are allowed to use 30 minutes or more of "attendance time" to meet the requirements for a rest break in the manner provided in 49 CFR 395.1(q), provided they perform no other on-duty activities during the rest break.

The FMCSA does not believe the safety record of any driver operating under this exemption will deteriorate. However, should deterioration in safety occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA has the authority to terminate the exemption at any time the Agency has the data/information to conclude that safety is being compromised.

Issued on: July 14, 2016.

T.F. Scott Darling, III,

Acting Administrator.

[FR Doc. 2016–17459 Filed 7–22–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0027]

Hours of Service of Drivers: WestRock Exemption; FAST Act Extension of Compliance Date

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; extension of exemption.

SUMMARY: FMCSA announces the extension of the exemption granted to WestRock, formerly known as RockTenn, on April 17, 2014, for short trips to their loading docks. The Agency extends the expiration date from April 17, 2014 to April 16, 2019, in response to the "Fixing America's Surface Transportation Act" (FAST Act). That Act extends the expiration date of hours-of-service (HOS) exemptions in effect on the date of enactment of the FAST Act to 5 years from the date of issuance of the exemptions. The WestRock exemption from the Agency's 14 hour rule is limited to WestRock drivers operating commercial motor vehicles (CMVs) between WestRock shipping and receiving departments only, on the public road (Compress Street). The Agency previously determined that the CMV operations of WestRock's drivers under this exemption would likely achieve a level of safety equivalent to or greater than the level of safety that would be obtained in the absence of the exemption.

DATES: This limited exemption is effective from April 17, 2014 through April 16, 2019.

SUPPLEMENTARY INFORMATION:

Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** [49 CFR 381.315(a)].

Section 5206(b)(2)(A) of the FAST Act requires FMCSA to extend any exemption from any provision of the HOS regulations under 49 CFR part 395 that was in effect on the date of enactment of the Act to a period of 5 years from the date the exemption was granted. The exemption may be renewed. Because this action merely implements a statutory mandate that took effect on the date of enactment of the FAST Act, notice and comment are not required.

WestRock Exemption

WestRock, a motor carrier formerly known as RockTenn, applied for a limited exemption from the prohibition from operating a CMV on a public road after the end of the 14th hour after coming on duty following 10 or more consecutive hours off duty [49 CFR 395.3(a)(2)] on behalf of their shipping department employees operating CMVs.

FMCSA reviewed WestRock's application and the public comments and concluded that limiting the exemption to CDL holders employed by WestRock who are exclusively assigned to a specific route, and may operate a CMV on a public road past the 14-hour limit, will promote safety at least as effectively as the "14-hour rule." These drivers operate like certain short-haul drivers, who are already permitted a 16-hour driving "window" once a week and other non-CDL short-haul drivers who are allowed two 16-hour duty periods per week. WestRock held a similar 2-year exemption from 2012–2014. A Notice of Final Determination granting the WestRock exemption was published on April 22, 2014 [79 FR 22571].

The substance of the exemption is not affected by this extension. The exemption covers only the "14 hour rule" [49 CFR 395.3(a)(3)(ii)]. The exemption is restricted to drivers employed by WestRock operating CMVs on a specified route. On each trip, the CMV must only travel on the public road (Compress Street)—approximately 275 feet in one direction—between WestRock's shipping and receiving departments. The exemption enables WestRock's shipping department drivers and occasional substitute CDL holders who transport paper mill products between WestRock's shipping and receiving locations on Compress Street to work up to 16 hours in a day and return to work with a minimum of at least 8 hours off duty.

The FMCSA does not believe the safety record of any driver operating under this exemption will deteriorate. However, should deterioration in safety occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA has the authority to terminate the exemption at any time the Agency has the data/information to conclude that safety is being compromised.

Issued on: July 14, 2016.

T.F. Scott Darling, III,

Acting Administrator.

[FR Doc. 2016–17462 Filed 7–22–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0032]

Commercial Driver's License Standards: Application for Exemption; Daimler Trucks North America (Daimler)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant an exemption to Daimler Trucks North America (Daimler) for one of its commercial motor vehicle (CMV) drivers. Daimler requested a 5-year exemption from the Federal requirement to hold a U.S. commercial driver's license (CDL) for Mr. Sebastian Boehm, a project engineer for the Daimler Trucks and Bus Division. Mr. Boehm holds a valid German commercial license and wants to test drive Daimler vehicles on U.S. roads to better understand product requirements in "real world" environments, and verify results. Daimler believes the requirements for a German commercial license ensure that operation under the exemption will likely achieve a level of safety equivalent to or greater than the level that would be obtained in the absence of the exemption.

DATES: This exemption is effective July 25, 2016 and expires July 25, 2021.

ADDRESSES:

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4325. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov* and insert the docket number, "FMCSA–2012–0032 in the "Keyword" box and click "Search." Next, click the "Open Docket Folder" button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption, and explain its terms and conditions. The exemption may be renewed (49 CFR 381.300(b)).

Section 5206(a)(3) of the "Fixing America's Surface Transportation Act," (FAST Act) [Pub. L. 114–94, 129 Stat. 1312, 1537, Dec. 4, 2015], amended 49 U.S.C. 31315(b) by adding a new paragraph (2) which permits exemptions for no longer than 5 years from their dates of inception, instead of the previous 2 years. This statutory provision will be codified in 49 CFR part 381 in a forthcoming rulemaking.

III. Request for Exemption

On behalf of Sebastian Boehm, Daimler has applied for a 5-year exemption from 49 CFR 383.23, which prescribes licensing requirements for drivers operating CMVs in interstate or intrastate commerce. Mr. Boehm is unable to obtain a CDL in any of the States due to his lack of residency in the United States. A copy of the application is in Docket No. FMCSA–2012–0032.

The exemption would allow Mr. Boehm to operate CMVs in interstate or intrastate commerce to support Daimler field tests designed to meet future vehicle safety and environmental requirements and to promote technological advancements in vehicle safety systems and emissions reductions. Mr. Boehm needs to drive Daimler vehicles on public roads to better understand "real world" environments in the U.S. market. According to Daimler, Mr. Boehm will typically drive for no more than 6 hours per day, and that 10 percent of the test driving will be on two-lane state highways, while 90 percent will be on interstate highways. The driving will consist of no more than 200 miles per day, for one to two weeks on a quarterly basis. He will in all cases be accompanied by a holder of a U.S. CDL who is familiar with the routes to be traveled.

Mr. Boehm would be required to comply with all applicable Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR parts 350–399) except the CDL provisions described in this notice.

Mr. Boehm holds a valid German commercial license, and as explained by Daimler in its exemption request, the requirements for that license ensure that the same level of safety is met or exceeded as if this driver had a U.S. CDL. Furthermore, according to Daimler, Mr. Boehm is familiar with the operation of CMVs worldwide.

FMCSA has previously determined that the process for obtaining a German commercial license is comparable to, or as effective as, the requirements of part 383, and adequately assesses the driver's ability to operate CMVs in the U.S. Since 2012, FMCSA has granted Daimler drivers similar exemptions [May 25, 2012 (77 FR 31422); July 22, 2014 (79 FR 42626); March 27, 2015 (80 FR 16511); October 5, 2015 (80 FR 60220); December 7, 2015 (80 FR 76059); December 21, 2015 (80 FR 79410)].

Public Comments

On May 4, 2016, FMCSA published notice of this application and requested public comments (81 FR 26866). No comments were submitted.

FMCSA Decision

Based upon the merits of this application, including Mr. Boehm's extensive driving experience and safety record, FMCSA has concluded that the exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption, in accordance with § 381.305(a).

Terms and Conditions for the Exemption

FMCSA grants Daimler and Sebastian Boehm an exemption from the CDL requirement in 49 CFR 383.23 to allow Mr. Boehm to drive CMVs in this country without a U.S. State-issued CDL, subject to the following terms and conditions: (1) The driver and carrier must comply with all other applicable provisions of the FMCSRs (49 CFR parts 350–399); (2) the driver must be in possession of the exemption document and a valid German commercial license; (3) the driver must be employed by and operate the CMV within the scope of his duties for Daimler; (4) at all times while operating a CMV under this exemption, the driver must be accompanied by a holder of a U.S. CDL who is familiar with the routes traveled; (5) Daimler must notify FMCSA in writing within 5 business days of any accident, as defined in 49 CFR 390.5, involving this driver; and (6) Daimler must notify FMCSA in writing if this driver is convicted of a disqualifying offense under § 383.51 or § 391.15 of the FMCSRs.

In accordance with 49 U.S.C. 31315 and 31136(e), the exemption will be valid for 5 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) Mr. Boehm fails to comply with the terms and conditions of the exemption; (2) the exemption results in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would be inconsistent with the goals and objectives of 49 U.S.C. 31315 and 31136.

VIII. Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate or intrastate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

Issued on: July 14, 2016.

T.F. Scott Darling, III,

Acting Administrator.

[FR Doc. 2016–17463 Filed 7–22–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Limitation on Claims Against a Proposed Public Transportation Project

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) for a project in Hennepin County, MN. The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject project and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: By this notice, FTA is advising the public of final agency actions subject to Section 139(l) of Title 23, United States Code (U.S.C.). A claim seeking judicial review of FTA actions announced herein for the listed public transportation project will be barred unless the claim is filed on or before December 22, 2016.

FOR FURTHER INFORMATION CONTACT: Jay M. Fox, Acting Assistant Chief Counsel, Office of Chief Counsel, (215) 656–7258 or Terence Plaskon, Environmental Protection Specialist, Office of Environmental Programs, (202) 366–0442. FTA is located at 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions by issuing certain approvals for the public transportation project listed below. The actions on the project, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA administrative record for the project. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information. Contact information for FTA's Regional Offices may be found at *https://www.fta.dot.gov.*

This notice applies to all FTA decisions on the listed project as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA [42 U.S.C. 4321–4375], Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303], Section 106 of the National Historic Preservation Act [16 U.S.C. 470f], and the Clean Air Act [42 U.S.C. 7401–7671q]. This notice does not, however, alter or extend the limitation period for challenges of project decisions subject to previous notices published in the **Federal Register**. The project and actions that are the subject of this notice are:

Project name and location: Southwest Light Rail Transit (LRT) Project, Hennepin County, MN. *Project sponsor:* Metropolitan Council. *Project description:* The proposed project is approximately 14.5 miles of new double-track proposed as an extension of the METRO Green Line (Central Corridor LRT), which will operate from downtown Minneapolis through the communities of St. Louis Park, Hopkins, Minnetonka, and Eden Prairie, passing in close proximity to Edina. The project will operate primarily at-grade, with structures providing grade separation of LRT crossings, roadways, and water bodies at specified locations. For just under one-half mile, the project will operate in a shallow light rail tunnel in the Kenilworth Corridor, between West Lake Street and just south of the Kenilworth Lagoon. Proposed system elements include 16 new light rail stations (including the Eden Prairie Town Center Station that is deferred for construction at a later date), one operations and maintenance facility, 20 traction power substations, 25 signal bungalow sites, and other ancillary facilities. *Final agency actions:* Section 4(f) determination; a Section 106 Memorandum of Agreement, dated July 13, 2016; project-level air quality conformity; and a Record of Decision, dated July 15, 2016. *Supporting documentation:* Final Environmental Impact Statement, dated May 13, 2016.

Lucy Garliauskas,

Associate Administrator Planning and Environment.

[FR Doc. 2016–17469 Filed 7–22–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Submission for OMB Review; Reduction of Permanent Capital Notice

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a new information collection as required by the Paperwork Reduction Act of 1995 (PRA).

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning a new information collection titled "Reduction of Permanent Capital Notice." The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be received by August 24, 2016.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–NEW, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *prainfo@occ.treas.gov.* You may inspect and photocopy comments in person at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to a security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–NEW, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503 or by email to: *oira submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, at (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is seeking approval for a proposed new information collection:

Title of Collection: Reduction of Permanent Capital Notice.

OMB Control No.: 1557–NEW.

Type of Review: New collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 2.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 40 minutes.

Description: Under 12 CFR 5.55, the OCC will review the information submitted by a Federal savings association in its application or notice requesting approval to issue a capital distribution to determine whether the Federal savings association's request is in accordance with existing statutory and regulatory criteria. In addition, the information provides the OCC with a mechanism for monitoring reductions in capital since these distributions may place the Federal savings association at risk.

On April 26, 2016, the OCC issued a 60-day notice soliciting comment on this proposed information collection, 81 FR 24690. No comments were received. Comments continue to be solicited on:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the OCC;

(b) The accuracy of OCC's estimate of the burden of the proposed information collection;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

Dated: July 19, 2016.

Karen Solomon,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2016–17490 Filed 7–22–16; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2016–0019]

Minority Depository Institutions Advisory Committee

AGENCY: Office of the Comptroller of the Currency, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Comptroller of the Currency has determined that the renewal of the charter of the OCC Minority Depository Institutions Advisory Committee (MDIAC) is necessary and in the public interest to provide advice and information about the current circumstances and future development of minority depository institutions, in accordance with the goals established by section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. 101–73, Title III, 103 Stat. 353, 12 U.S.C. 1463 note.

DATES: The charter of the OCC MDIAC is renewed for a two-year period that began on June 28, 2016.

FOR FURTHER INFORMATION CONTACT: Beverly F. Cole, Deputy Comptroller for Compliance Supervision and Designated Federal Officer, (202) 649–5420, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Notice of the renewal of the MDIAC charter is hereby given under section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), and with the approval of the Secretary of the Treasury. The Comptroller of the Currency has determined that the renewal of the MDIAC charter is necessary and in the public interest to provide advice and information about the current circumstances and future development of minority depository institutions, in accordance with the goals established by section 308 of FIRREA. The goals of section 308 are to preserve the present number of minority depository institutions, preserve the minority character of minority depository institutions in cases involving mergers or acquisitions, provide technical assistance, and encourage the creation of new minority depository institutions.

Dated: July 19, 2016.

Thomas J. Curry,

Comptroller of the Currency.

[FR Doc. 2016–17489 Filed 7–22–16; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Disclosure and Reporting of CRA-Related Agreements

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number.

The OCC is soliciting comment concerning the renewal of its information collection titled, "Disclosure and Reporting of CRA-Related Agreements." The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be received by August 24, 2016.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0219, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *prainfo@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0219, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to: *oira submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend, without change, OMB approval of the following information collection:

Title: Disclosure and Reporting of CRA-Related Agreements.

OMB Control No.: 1557–0219.

Description: National banks, Federal savings associations, and their affiliates (institutions) occasionally enter into agreements with nongovernmental entities or persons (NGEPs) that are related to their Community Reinvestment Act (CRA) responsibilities. Section 48 of the Federal Deposit Insurance Act (FDI Act)[1] requires disclosure of certain of these agreements and imposes reporting requirements on institutions and other insured depository institutions (IDIs), their affiliates, and NGEPs. As mandated by the FDI Act, the OCC, the Federal Deposit Insurance Corporation, and the Federal Reserve Board issued regulations to implement these disclosure and reporting requirements. The disclosure and reporting provisions of these regulations constitute collections of information under the PRA. The regulation issued by the OCC is codified at 12 CFR part 35, and the collections of information contained in that regulation are known as "CRA Sunshine."

Section 48 of the FDI Act applies to written agreements that: (1) Are made in fulfillment of the CRA; (2) involve funds or other resources of an IDI or affiliate with an aggregate value of more than $10,000 in a year or loans with an aggregate principal value of more than $50,000 in a year; and (3) are entered into by an IDI or affiliate of an IDI and an NGEP.[2]

The parties to a covered agreement must make the agreement available to the public and the appropriate agency.[3] The parties also must file a report annually with the appropriate agency concerning the disbursement, receipt, and use of funds or other resources under the agreement.[4] The collections of information in CRA Sunshine implement these statutorily mandated disclosure and reporting requirements. The parties to the agreement may request confidential treatment of proprietary and confidential information in an agreement or annual report.[5]

The information collections are found in 12 CFR 35.4(b); 35.6(b)–(d); and 35.7(b) and (f).

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 14.

Estimated Total Annual Burden: 1,026.

Comments: On March 9, 2016, the OCC issued a 60-day notice soliciting comment on this information collection, 81 FR 12565. The OCC received one comment from an individual.

The commenter stated that the collection is necessary and has practical utility. The commenter suggested that the OCC amend 12 CFR 35.6 to require that national banks and Federal savings associations publish covered agreements on their Web sites and that the OCC post them on its Web site as well. The CRA Sunshine statute set forth in section 48 of the FDI Act requires that the Federal banking agencies' CRA Sunshine regulations protect proprietary and confidential information of parties.[6] In order to comply with that statutory requirement, the OCC will make covered agreements and annual reports available to the public in accordance with the Freedom of Information Act (FOIA)[7] and the OCC's rules regarding the availability of information under the FOIA.[8]

The commenter believed that the burden estimates may be low as institutions may not be aware of the filing requirements in § 35.6(d). The commenter requested that the OCC discuss how the estimates were derived and whether the possibility of underreporting was factored into the estimates. The estimates were obtained by counting the number of actual filings received. Failure to report due to a lack of awareness of the filing requirements in § 35.6 was not considered as this is not within the scope of the PRA.

Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 19, 2016.

Karen Solomon,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2016–17488 Filed 7–22–16; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Interagency Guidance on Asset Securitization Activities

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning renewal of its information collection titled, "Interagency Guidance on Asset Securitization Activities." The OCC also is giving notice that it has sent the collection to OMB for review.

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[1] 12 U.S.C. 1831y.

[2] 12 U.S.C. 1831y(e).

[3] 12 U.S.C. 1831y(a).

[4] 12 U.S.C. 1831y(b)–(c).

[5] 12 CFR 35.8; *see* 12 U.S.C. 1831y(h)(2)(A).

[6] 12 U.S.C. 1831y(h)(2)(A).

[7] 5 U.S.C. 552 *et seq.*

[8] 12 CFR part 4, subpart b; see 12 CFR 35.8.

DATES: Comments must be submitted on or before August 24, 2016.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0217, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *prainfo@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0217, U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503 or by email to: *oira submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is requesting that OMB extend its approval of the following information collection:

Title: Interagency Guidance on Asset Securitization Activities.

OMB Control No.: 1557–0217.

Type of Review: Regular.

Description: This information collection applies to institutions engaged in asset securitization activities and provides that any institution engaged in these activities should maintain a written asset securitization policy, document the fair value of retained interests, and maintain a management information system to monitor asset securitization activities. An institution's management uses the information collected to ensure the safe and sound operation of the institution's asset securitization activities. The OCC uses the information to evaluate the quality of an institution's risk management practices.

Affected Public: Businesses or other for-profit.

Burden Estimates:

Estimated Number of Respondents: 35 national banks and Federal savings associations.

Estimated Annual Burden: 1,827 hours.

Frequency of Response: On occasion.

Comments: On April 27, 2016, the OCC issued a 60-day notice soliciting comment on the information collection, 81 FR 24939. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 19, 2016.

Karen Solomon,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2016–17491 Filed 7–22–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Determination of Interest Expense Deduction of Foreign Corporation.

DATES: Written comments should be received on or before September 23, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection tools should be directed to Kerry Dennis, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Determination of Interest Expense Deduction of Foreign Corporation.

OMB Number: 1545–2030. Form Number: TD 9465.

Abstract: This document contains final regulations under Section 882(c) of the Internal Revenue Code concerning the determination of the interest expense deduction of foreign corporations engaged in a trade or business within the United States. These final regulations conforms the interest expense rules to recent U.S. Income Tax Treaty agreements and adopt other changes to improve compliance.

Current Actions: There are no changes to the previously approved burden of this existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 75.

Estimated Time per Respondent: 28 min.

Estimated Total Annual Burden Hours: 35 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 6, 2016.

Tuawana Pinkston,

IRS Reports Clearance Officer.

[FR Doc. 2016–17464 Filed 7–22–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Continuity of Interest.

DATES: Written comments should be received on or before September 23, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Kerry Dennis at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Continuity of Interest.

OMB Number: 1545–1691.

Regulation Project Number: REG–120882–97 (TD 8898).

Abstract: Taxpayers who entered into a binding agreement on or after January 28, 1998 (the effective date of § 1.368–1), and before the effective date of the final regulations under § 1.368–1(e) may request a private letter ruling permitting them to apply § 1.368–1(e) to their transaction. A private letter ruling will not be issued unless the taxpayer establishes to the satisfaction of the IRS, that there is not a significant risk of different parties to the transaction taking inconsistent positions, for U.S. tax purposes with respect to the applicability of § 1.368–1(e) to the transaction.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This regulation is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 10.

Estimated Time per Respondent: 150 hours.

Estimated Total Annual Burden Hours: 1,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 12, 2016.

Tuawana Pinkston,

IRS Reports Clearance Officer.

[FR Doc. 2016–17468 Filed 7–22–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 14693

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 14693, Application for Reduced Rate of Withholding on Whistleblower Award Payment.

DATES: Written comments should be received on or before September 23, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Allan Hopkins, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Reduced Rate of Withholding on Whistleblower Award Payment.

OMB Number: 1545–XXXX.

Form Number: Form 14693.

Abstract: The Application for Reduced Rate of Withholding on Whistleblower Award Payment will be used by the whistleblower to apply for a reduction in withholding to minimize the likelihood of the IRS over withholding tax from award payments providing whistleblowers with a pre-award payment opportunity to substantiate their relevant attorney fees and court costs. The Whistleblower Office will review and evaluate the form and calculate the rate.

Current Actions: This new form is being submitted for OMB approval.

Type of Review: New collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 75.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 12, 2016.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2016–17465 Filed 7–22–16; 8:45 am]

BILLING CODE 4830–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

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FEDERAL REGISTER

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Part II

Department of the Treasury

Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

12 CFR Parts 25, 195, 228, et al.

Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Guidance

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 25 and 195

[Docket ID OCC–2014–0021]

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Docket No. OP–1497]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Guidance

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC).

ACTION: Guidance on the interpretation and application of the Community Reinvestment Act regulations.

SUMMARY: The OCC, Board, and FDIC (the Agencies) are adopting as final revisions to the Interagency Questions and Answers Regarding Community Reinvestment (Questions and Answers) based on the proposal issued on September 10, 2014 addressing alternative systems for delivering retail banking services; community development-related issues; and the qualitative aspects of performance, including innovative or flexible lending practices and the responsiveness and innovativeness of an institution's loans, qualified investments, and community development services. The Agencies are clarifying nine of the 10 proposed questions and answers (Q&A), revising four existing Q&As for consistency, and adopting two new Q&As. The Agencies are not adopting one of the proposed revisions to guidance that addressed the availability and effectiveness of retail banking services. Finally, the Agencies are making technical corrections to the Questions and Answers to update cross-references and remove references related to the Office of Thrift Supervision (OTS) as obsolete. The Agencies are publishing all of the new and revised Q&As, as well as those Q&As that were published in 2010 and 2013 and that remain in effect in this final guidance.

DATES: This document goes into effect on July 25, 2016.

FOR FURTHER INFORMATION CONTACT: *OCC:* Bobbie K. Kennedy, Bank Examiner, Compliance Policy Division, (202) 649–5470; Vonda Eanes, National Bank Examiner and District Community Affairs Officer, Community Affairs, (202) 649–6420; or Margaret Hesse, Senior Counsel, Community and Consumer Law Division, (202) 649–6350, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

Board: Catherine M.J. Gates, Senior Project Manager, (202) 452–2099; or Theresa A. Stark, Senior Project Manager, (202) 452–2302, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

FDIC: Patience R. Singleton, Senior Policy Analyst, Supervisory Policy Branch, (202) 898–6859; Sharon B. Vejvoda, Senior Examination Specialist, Compliance and CRA Examinations Branch, (202) 898–3881; Surya Sen, Section Chief, Supervisory Policy Branch, (202) 898–6699, Division of Depositor and Consumer Protection; or Richard M. Schwartz, Counsel (202) 898–7424; or Sherry Ann Betancourt, Counsel, (202) 898–6560, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

The Agencies implement the Community Reinvestment Act (CRA) (12 U.S.C. 2901 *et seq.*) through their CRA regulations. *See* 12 CFR parts 25, 195, 228, and 345. The CRA is designed to encourage regulated financial institutions to help meet the credit needs of their entire communities. The CRA regulations establish the framework and criteria by which the Agencies assess an institution's record of helping to meet the credit needs of its community, including low- and moderate-income neighborhoods, consistent with safe and sound operations. The regulations provide different evaluation standards for institutions of different asset sizes and types.

The Agencies publish the Questions and Answers[1] to provide guidance on the interpretation and application of the CRA regulations to agency personnel, financial institutions, and the public. The Agencies first published the Questions and Answers under the auspices of the Federal Financial Institutions Examination Council (FFIEC) in 1996 (61 FR 54647). The Questions and Answers were last published in full by the Agencies on March 11, 2010 (2010 Questions and Answers) (75 FR 11642). In 2013, the Agencies adopted revised guidance on community development topics that amended and superseded five Q&As and added two new Q&As (2013 Questions and Answers) (78 FR 69671), which supplemented the 2010 Questions and Answers. This document supplements, revises, republishes, and supersedes the 2010 Questions and Answers and the 2013 Questions and Answers.

The Questions and Answers are grouped by the provision of the CRA regulations that they discuss, are presented in the same order as the regulatory provisions, and employ an abbreviated method of citing to the regulations. For example, for thrifts, the small savings association performance standards appear at 12 CFR 195.26; for national banks, the small bank performance standards appear at 12 CFR 25.26; for Federal Reserve System member banks supervised by the Board, they appear at 12 CFR 228.26; and for state nonmember banks, they appear at 12 CFR 345.26. Accordingly, the citation would be to 12 CFR ____.26. Each Q&A is numbered using a system that consists of the regulatory citation and a number, connected by a dash. For example, the first Q&A addressing 12 CFR ____.26 would be identified as § ____.26–1.

Although a particular Q&A may provide guidance on one regulatory provision, *e.g.*, 12 CFR ____.22, which relates to the lending test applicable to large institutions, its content may also be applicable to, for example, small institutions, which are evaluated pursuant to small institution performance standards found at 12 CFR ____.26. Thus, readers with a particular interest in small institution issues, for example, should review Q&As relevant to other financial institutions as well.

A. The 2014 Proposal and Overview of Comments

On September 10, 2014, the Agencies proposed to revise six existing Q&As.[2] Two Q&As addressed the availability and effectiveness of retail banking services[3] and one Q&A addressed innovative or flexible lending practices.[4] The other three proposed revised Q&As addressed community development-related issues, including economic development, community development loans, and activities that are considered to revitalize or stabilize an underserved nonmetropolitan middle-income geography.[5] The Agencies also proposed to add four new Q&As, two of which addressed community development services,[6] and two of which provided general guidance on responsiveness and innovativeness.[7]

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[1] Throughout this document, "Questions and Answers" refers to the "Interagency Questions and Answers Regarding Community Reinvestment" in its entirety; "Q&A" refers to an individual question and answer within the Questions and Answers.

[2] 75 FR 53838 (Sept. 10, 2014).

[3] Q&As § ____.24(d)–1 and § ____.24(d)(3)–1.

[4] Q&A § ____.22(b)(5)–1.

Together, the Agencies received 126 different comment letters on the proposed Q&As, plus over 900 form letter submissions. The commenters included financial institutions and their trade associations (collectively, industry commenters), community development advocates and consumer organizations (collectively, community organization commenters), state bank supervisors, Federal agencies, and other interested parties.

Most commenters supported the Agencies' efforts to clarify the CRA guidance. Some commenters also suggested revisions to the proposed new and revised Q&As, as well as posed questions or stated concerns about the Q&As. Comments received by the Agencies on each revised or new proposed Q&A are discussed in further detail below in Parts II and III.

B. Summary of Final Q&As

The Agencies are adopting nine of the 10 proposed Q&As with clarifications to reflect commenters' suggestions. Parts II and III below discuss the clarifications made to these nine Q&As. Further, as discussed more fully below in Part II.C.i., in response to comments received, the Agencies are not adopting as final the proposed revisions to Q&A § ____.24(d)–1, one of the Q&As that addresses the availability and effectiveness of retail banking services.

The Agencies are also revising four additional existing Q&As[8] and adopting two new Q&As[9] based on questions and suggestions provided by the commenters. Finally, as discussed in Part IV, the Agencies have made technical corrections to 25 Q&As to update, for example, regulatory references, addresses, and references related to the former OTS.

As has been done in the past, the Agencies intend to provide training on all aspects of the new and revised Questions and Answers for examiners, as well as outreach for bankers and other interested parties.

II. Revisions to Existing Q&As

A. Community Development

Community development is an important component of community reinvestment and is considered in the CRA evaluations of financial institutions of all types and sizes. Community development activities are considered under the regulations' large institution, intermediate small institution, and wholesale and limited purpose institution performance tests. *See* 12 CFR ____.22(b)(4), ____.23, ____.24(e), ____.26(c), and ____.25. In addition, small institutions may use community development activities to receive consideration toward an outstanding rating. The Agencies believe that community development generally improves the circumstances for low- and moderate-income individuals and stabilizes and revitalizes the communities in which they live or work.

The Agencies proposed to provide additional clarification of three Q&As addressing community development-related topics.

i. Economic Development

The CRA regulations define community development to include "activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company (SBDC) or Small Business Investment Company (SBIC) programs (13 CFR 121.301) or have gross annual revenues of $1 million or less." *See* 12 CFR ____.12(g)(3). The Questions and Answers provide additional guidance on activities that promote economic development in Q&As § ____.12(g)(3)–1, § ____.12(i)–1, § ____.12(i)–3, and § ____.12(t)–4.

Existing Q&A § ____.12(g)(3)–1 explained the phrase "promote economic development." This Q&A stated that activities promote economic development by financing small businesses or farms if they meet two "tests": (i) A "size test" (the beneficiaries of the activity must meet the size eligibility standards of the SBDC or SBIC programs or have gross annual revenues of $1 million or less); and (ii) a "purpose test," which is intended to ensure that a financial institution's activities promote economic development consistent with the CRA regulations. Existing Q&A § ____.12(g)(3)–1 stated that activities promote economic development if they "support permanent job creation, retention, and/or improvement for persons who are currently low- or moderate-income, or support permanent job creation, retention, and/or improvement either in low- or moderate-income geographies or in areas targeted for redevelopment by Federal, state, local, or tribal governments." The Q&A further explained, "[t]he Agencies will presume that any loan to or investment in a SBDC, SBIC, Rural Business Investment Company, New Markets Venture Capital Company, or New Markets Tax Credit-eligible Community Development Entity promotes economic development."

The Agencies proposed to revise existing Q&A § ____.12(g)(3)–1 to clarify what is meant by the phrase "promote economic development," and to better align this Q&A with other guidance provided in existing Q&As § ____.12(i)–1 and § ____.12(i)–3 regarding consideration of economic development activities undertaken by financial institutions. Further, the Agencies proposed to revise the guidance to add additional examples that would demonstrate a purpose of economic development, such as workforce development and technical assistance support for small businesses. In addition, the Agencies requested public comment on seven questions regarding the proposed revisions to the Q&A.

The Agencies received 40 comments addressing proposed revised Q&A § ____.12(g)(3)–1. Most commenters provided general comments about the proposed revised Q&A, with relatively few responding to the seven specific questions posed by the Agencies. Commenters generally supported the Agencies' efforts to clarify the types of activities that promote economic development. One industry commenter mentioned that changing the format to a bulleted list of activities that demonstrate a purpose of economic development is helpful.

A few industry commenters suggested eliminating the purpose test altogether, asserting that the regulations require only that activities relate to businesses that meet Small Business Administration (SBA) size-eligibility requirements. However, the Agencies note the intent of the purpose test is to explain what is meant by the phrase "promote economic development." The purpose test ensures that examiners consider only activities that promote economic development as activities with a primary purpose of community development. Other loans to small businesses and small farms are considered as retail loans if they meet certain loan-size standards (*see* 12 CFR

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[5] Q&As § ____.12(g)(3)–1; § ____.12(h)–1; and § ____.12(g)(4)(iii)–4.

[6] Q&As § ____.24(a)–1 and § ____.24(e)–2.

[7] Q&As § ____.21(a)–3 and § ____.21(a)–4.

[8] Q&As § ____.12(g)–1, § ____.12(i)–3, § ____.12(t)–4, and § ____.26(c)(3)–1.

[9] Q&As § ____.12(g)–4 and § ____.24(d)(4)–1.

____.12(v) and (w)); larger loans to small businesses and small farms that do not meet the purpose test would not be considered in a CRA evaluation as small business or small farm loans. Furthermore, they would not be considered as community development loans, unless they have an alternate community development purpose as defined in 12 CFR ____.12(g).

The Agencies specifically asked what information is available to demonstrate that an activity meets the size and purpose tests. One community organization commenter suggested that examiners consider the size of the business by revenues or, alternatively, the mission statement of the intermediary lender, if the statement provides sufficient detail on the types of businesses served, to demonstrate an activity meets the size test. A few industry commenters suggested that all activities that support small businesses should be presumed to qualify and meet the purpose test.

As noted above, existing Q&A § ____.12(g)(3)–1 explained that the Agencies will presume that any loan to or investment in a SBDC, SBIC, Rural Business Investment Company, New Markets Venture Capital Company, or New Markets Tax Credit-eligible Community Development Entity promotes economic development. The Agencies proposed a revision to the Q&A to add the following presumption: For loans to or investments in a Community Development Financial Institution (CDFI) that finances small businesses or small farms. As discussed below, the Agencies are adopting this proposed amendment to Q&A § ____.12(g)(3)–1 regarding CDFIs.

The Agencies also proposed to revise the existing Q&A § ____.12(g)(3)–1 by removing the reference to persons who are "currently" low- or moderate-income in order to clarify that banks can focus on community development activities that extend beyond support for low-wage jobs. The Agencies specifically requested input on whether the proposed revision would help to clarify what is meant by job creation, retention, or improvement for low- or moderate-income individuals. Commenters generally agreed with removing the reference to persons who are "currently" low- or moderate-income. However, most commenters indicated that the proposal did not sufficiently clarify what is meant by job creation, retention, or improvement for low- or moderate-income persons beyond the creation of low-wage jobs. Industry commenters reiterated concerns that the primary method to demonstrate that activities benefit low- or moderate-income individuals is to provide evidence of low-wage jobs, which is not consistent with the spirit or intent of the CRA. These commenters also expressed concerns that the proposal did not include examples of methods that could be used to demonstrate that the persons for whom jobs are created, retained, or improved are low- or moderate-income, and asked that the Agencies incorporate examples into the final Q&A.

The Agencies are adopting revisions to existing Q&A § ____.12(g)(3)–1 largely as proposed, but with additional clarifications.

First, the Agencies recognize that financial institutions may rely on a variety of methods to demonstrate that activities promote economic development. To make clear that financial institutions may provide various types of information to demonstrate that an activity meets the purpose test, the Agencies have added a statement in the final Q&A clarifying that examiners will employ appropriate flexibility in reviewing any information provided by a financial institution that reasonably demonstrates that the purpose, mandate, or function of an activity meets the purpose test.

In addition to the above revisions, the Agencies had proposed to add examples of types of activities that would meet the purpose test of promoting economic development. The Agencies are adopting these examples largely as proposed, but with some clarifications and revisions to address commenters' concerns, as discussed more fully below. Accordingly, the Agencies are adopting this final Q&A with reference to activities that are considered to promote economic development if they support permanent job creation, retention, and/or improvement:

- For low- or moderate-income persons;
- in low- or moderate-income geographies;
- in areas targeted for redevelopment by Federal, state, local, or tribal governments;
- by financing intermediaries that lend to, invest in, or provide technical assistance to start-ups or recently formed small businesses or small farms; or
- through technical assistance or supportive services for small businesses or farms, such as shared space, technology, or administrative assistance.

The final Q&A also recognizes that Federal, state, local, or tribal economic development initiatives that include provisions for creating or improving access by low- or moderate-income persons to jobs, or job training or workforce development programs, promote economic development.

The Agencies note that only one of the examples in the final Q&A explicitly refers to permanent job creation, retention, and/or improvement for low- or moderate-income persons. The Agencies encourage activities that promote economic development through opportunities for low- and moderate-income individuals to obtain higher wage jobs, such as through private industry collaborations with workforce development programs for unemployed persons and are clarifying that examiners will consider the qualitative aspects of performance related to all activities that promote economic development. In particular, activities will be considered more responsive to community needs if a majority of jobs created, retained, and/or improved benefit low- or moderate-income individuals.

The Agencies also note that Q&A § ____.12(g)(2)–1 provides examples of ways in which an institution could determine that community services and, therefore, other types of community development activities, including economic development, are targeted to low- or moderate-income individuals. In particular, the example explaining that an institution may use readily available data for the average wage for workers in a particular occupation or industry could be useful when determining whether an activity promotes economic development.

The Agencies specifically asked whether the proposed examples demonstrating that an activity promotes economic development for CRA purposes were appropriate, and whether there are other examples the Agencies should include. Most commenters generally agreed the proposed examples were appropriate. Several community organization commenters, as well as a state bank supervisory agency commenter, suggested the Q&A should also include a reference to the "quality of jobs" created, retained, or improved. Industry commenters, however, opposed a "quality of jobs standard," expressing concerns related to increased subjectivity by examiners and the Agencies and documentation burden on institutions, small businesses or small farms, and examiners. The Agencies recognize that the term "quality" is subjective, not easily defined, and heavily influenced by local economic conditions, needs, and opportunities. The amount of time, resources, and expertise needed to fairly evaluate the quality of jobs created, retained, and/or improved for low- or moderate-income individuals could be overly burdensome for examiners, financial institutions, and small businesses or small farms. However, the Agencies note that examiners are not precluded from considering qualitative factors relative to a particular financial institution's performance context, including, at the institution's option, any information provided on the quality of jobs created, retained, or improved through any of the types of activities listed in the Q&A's description of the purpose test as promoting economic development.

The Agencies proposed that permanent job creation, retention, and/or improvement is supported "through the creation or development of small businesses or farms" and, therefore, such activity would be considered to promote economic development and meet the "purpose test." The Agencies proposed this example in an effort to recognize the impact small businesses have on job creation in general, and to address industry concerns that activities in support of intermediary lenders or other service providers, such as business incubators that lend to start-up businesses and help businesses become bankable and sustainable, are often not considered under the purpose test. Industry commenters have previously indicated that such activities are not considered because it is not clear under the purpose test that these activities help promote economic development since any job creation, retention, or improvement would occur in the future—after the businesses are organized or more established. However, there were concerns that the proposed guidance stating that permanent job creation, retention, and/or improvement "through the creation or development of small business or farms" may be overly broad and could result in diffuse potential benefit to low- or moderate-income persons or geographies. The Agencies are adopting this example with revisions to clarify that examiners will consider activities that support permanent job creation, retention, and/or improvement by financing intermediaries that lend to, invest in, or provide technical assistance to *start-up or recently formed* small businesses or small farms. This example applies to loans to, investments in, or services to intermediaries that, in turn, lend to, invest in, or provide technical assistance to small businesses or small farms, and not to activities provided directly by an institution to small businesses or small farms. A loan to a small business or small farm would be considered under the lending test applicable to a particular institution—for example, for large institutions, under the retail lending evaluation criteria.

The Agencies also proposed to add activities that support permanent job creation, retention, and/or improvement "[t]hrough workforce development and/or job or career training programs that target unemployed or low- or moderate-income persons" to the list of activities that are considered to promote economic development under the purpose test. Two government agency commenters expressed concerns that these activities, in and of themselves, may not involve financing small businesses or small farms and, therefore, would not meet the size test. To address these concerns, the final Q&A does not incorporate this example in the list of those types of activities that promote economic development under the purpose test. However, the Agencies are amending existing Q&As § ____.12(g)–1 and § ____.12(t)–4 to clarify that activities related to workforce development or job training programs for low- or moderate-income or unemployed persons are considered qualified community development activities.

The last example of a type of activity that would be considered to promote economic development that the Agencies proposed referred to "Federal, state, local, or tribal economic development initiatives that include provisions for creating or improving access by low- or moderate-income persons, to jobs, affordable housing, financial services, or community services." Industry and community organization commenters suggested amending or eliminating this proposed activity altogether because it blurs the line between activities that support economic development and those that support other types of community development and could create confusion. Although the Agencies' original intention was to recognize all Federal, state, local, or tribal economic development initiatives, the Agencies agree with these commenters and have eliminated references to affordable housing, financial services, and community services, which would receive consideration under other prongs of the definition of "community development." However, the Agencies have otherwise retained the example in the final Q&A being adopted, and have added a reference to governmental economic development initiatives that include job training or workforce development programs, because those initiatives are closely related to job creation, retention, and/or improvement.

Commenters overwhelmingly supported adding CDFIs that finance small businesses or small farms to the list of entities for which loans or investments are presumed to promote economic development; even so, some questioned limiting the presumption to CDFIs that finance small businesses or small farms. The Agencies are adopting this revision as proposed. In order for a CDFI to promote economic development by financing small businesses and small farms, it follows that any CDFI presumed to promote economic development would need to finance small businesses or small farms. Additionally, the Agencies are further revising the statement granting presumptions for activities related to the specified entities to include services provided to these entities, as well loans and investments.

Several commenters representing the Historic Tax Credit (HTC) industry suggested changes to the proposed Q&A that would expand and clarify the circumstances under which CRA consideration would be available for loans and investments related to projects involving HTCs. These commenters suggested the Agencies amend Q&A § ____.12(g)(3)–1 to create a presumption that activities related to HTC projects qualify for CRA consideration as promoting economic development by financing small businesses and small farms. Because not all HTC projects would meet the requirements to qualify for CRA consideration under 12 CFR ____.12(g)(3), the Agencies believe it would be inappropriate to grant such a presumption. Nonetheless, in instances in which loans to, or investments in, projects that receive HTCs do meet the regulatory definition of community development, including the geographic restrictions, the Agencies concur that CRA consideration should be provided. For example, a loan to, or investment in, an HTC project that does, in fact, relate to a facility that will house small businesses that support permanent job creation, retention, or improvement for low- or moderate-income individuals, in low- or moderate-income areas, or in areas targeted for redevelopment by Federal, state, local, or tribal governments may receive CRA consideration as promoting economic development. Further, a loan to or investment in an HTC project that will provide affordable housing or community services for low- or moderate-income individuals would meet the definition of community development as affordable housing or a community service targeted to low- or moderate-income individuals, respectively. Similarly, loans to or investments in HTC projects may also meet the definition of community development when the project revitalizes or stabilizes a low- or moderate-income geography, designated disaster area, or a designated distressed or underserved nonmetropolitan middle-income geography. Greater weight will be given to those HTC-related activities that are most responsive to community credit needs, including the needs of low- or moderate-income individuals or geographies. *See* Q&As § ____.12(g)–1, § ____.12(g)(2)–1, § ____.12(g)(4)–2, § ____.12(g)(4)(i)–1, and § ____.12(g)(4)(ii)–2 through–4.

In response to the Agencies' request for input on the types of information examiners should review when determining the performance context of an institution, some community organizations suggested consulting local studies and Federal Reserve Bank credit surveys; talking with CDFIs, local municipalities, and community organizations that work directly with small businesses; reviewing municipal needs assessments; and evaluating business and local demographic data. One industry commenter suggested examiners could review financial institution Consolidated Reports of Condition and Income (Call Reports) and academic or governmental economic development reports or adopted plans. Another industry commenter suggested that existing Q&As explain that an institution may provide examiners with any relevant information and, therefore, provide sufficient guidance without overlaying prescriptive changes that could be counter-productive to an institution's efforts to balance innovativeness and responsiveness with its unique business strategy. Also regarding performance context, community organization commenters called for examiners to conduct "robust" analyses of local needs, including localized data on employment needs and opportunities for low- or moderate-income individuals. The Agencies will consider commenters' suggestions going forward.

Finally, one community organization commenter noted that activities that support technical assistance may not involve "financing" small businesses or small farms and, therefore, may not be consistent with the size test. Providing technical assistance on financial matters to small businesses is currently cited as an example of a community development service in Q&A § ____.12(i)–3 and involves the provision of financial services. The Agencies long ago recognized that many small businesses, particularly start-up companies, are not immediately prepared for, or qualified to engage in, traditional bank financing and, therefore, included providing technical assistance to small businesses and small farms as a community development activity. However, the Agencies understand that reasoning may not be clear to examiners or financial institutions. To address this issue, the Agencies have amended the description of the "size test" in the final Q&A to explain that the term "financing" in this context is considered broadly and includes technical assistance that readies a business that meets the size eligibility standards to obtain financing. The Agencies intend this explanation to ensure that technical assistance that readies a small business or small farm to obtain financing is an activity that promotes economic development and, thus, would receive consideration as a community development activity.

ii. Revitalize or Stabilize Underserved Nonmetropolitan Middle-Income Geographies

The definition of "community development" includes "activities that revitalize or stabilize . . . underserved nonmetropolitan middle-income geographies . . . ." *See* 12 CFR ____.12(g)(4)(iii). The CRA regulations further provide that activities revitalize or stabilize underserved nonmetropolitan middle-income geographies if they help to meet essential community needs, including the needs of low- or moderate-income individuals. *See* 12 CFR ____.12(g)(4)(iii)(B). Existing Q&A § ____.12(g)(4)(iii)–4 provided further guidance by listing examples of activities that would be considered to help to revitalize or stabilize underserved nonmetropolitan middle-income geographies. The Agencies proposed to revise this guidance by adding a new example describing an activity related to a new or rehabilitated communications infrastructure in recognition that the availability of reliable communications infrastructure, such as broadband Internet service, is important in helping to revitalize or stabilize underserved nonmetropolitan middle-income geographies.

The Agencies received 66 comments addressing the proposed addition of the new example involving communications infrastructure. Commenters' views on whether the new example should be added to Q&A § ____.12(g)(4)(iii)–4 were mixed.

A number of commenters expressed concern regarding the addition of a new or rehabilitated communications infrastructure as an example of an activity that would be considered to revitalize or stabilize a nonmetropolitan middle-income geography. These commenters, primarily representing community organizations, generally expressed the view that CRA consideration should be used as a means of encouraging financial institutions to find more direct ways to meet the needs of low- or moderate-income individuals and geographies. One individual commenter that opposed the addition of the example expressed concern that "regulatory creep" was moving the focus of the CRA away from its original mission of helping to meet community credit needs.

In contrast, most industry commenters, as well as a few community organization commenters, supported the addition of the new example addressing communications infrastructure. These commenters stated that such an example would provide further clarity regarding what constitutes an activity that could revitalize or stabilize underserved nonmetropolitan middle-income geographies. Many commenters who supported the addition of the new example noted the importance of communications infrastructure, and in particular broadband access, to the economic viability of underserved nonmetropolitan middle-income geographies' residents and businesses in the current marketplace. Further, many of these commenters noted that the addition of the new example also may help to improve access to alternative systems of delivering retail banking services, which require reliable access to broadband.

The Agencies are adopting the new example describing a new or rehabilitated communications infrastructure because they continue to believe that, consistent with the CRA regulatory definition of "community development," communications infrastructure is an essential community service. Specifically, the definition of "community development" provides that activities that help meet "essential community needs" revitalize and stabilize underserved nonmetropolitan middle-income geographies. Further, existing Q&A § ____.12(g)(4)(iii)–4 clarifies that "financing for the construction, expansion, improvement, maintenance, or operation of essential infrastructure" may qualify for revitalization or stabilization consideration. As noted above, in the Agencies' view, reliable communications infrastructure is increasingly essential to the economic viability of all residents of underserved nonmetropolitan middle-income geographies, including low- and moderate-income individuals.

Several industry and community organization commenters, as well as a commenter representing a state banking supervisor, sought clarification regarding the extent to which the new or rehabilitated communications infrastructure must benefit low- or moderate-income individuals or geographies. The Agencies considered whether to provide additional clarification addressing these comments and determined that additional guidance was not necessary. First, existing Q&A § ____.12(g)(4)(iii)–4 states that, to receive CRA consideration on the basis of revitalizing or stabilizing an underserved nonmetropolitan middle-income geography, a project must meet essential community needs, including the needs of low- or moderate-income individuals. Although the geographies (a term defined at 12 CFR ____.12(k) as census tracts) addressed by Q&A § ____.12(g)(4)(iii)–4 are designated as middle-income, there typically are low- and moderate-income individuals and neighborhoods interspersed throughout these nonmetropolitan geographies.

Second, the CRA regulations [10] and Q&A § ____.12(g)(4)(iii)–4 do not require that financial institutions demonstrate that projects primarily benefit the low- and moderate-income individuals or neighborhoods in these geographies in order to receive CRA consideration for revitalizing or stabilizing the underserved nonmetropolitan middle-income geographies. The Agencies believe that the current explanation in Q&A § ____.12(g)(4)(iii)–4 is clear regarding the benefits to an underserved nonmetropolitan middle-income geography and the low- and moderate-income individuals within that geography.

Two industry commenters and one community organization commenter requested that the proposed new example not be limited to Q&A § ____.12(g)(4)(iii)–4, asserting that communications infrastructure should also be considered to be an activity that revitalizes or stabilizes distressed nonmetropolitan middle-income, and low- or moderate-income, geographies. One industry commenter stated that it should be made clear that investments in new or rehabilitated communications infrastructure, and not just loans related to such activities, would receive CRA consideration. In addition, a few commenters requested generally that the Agencies clarify that the list of examples included in Q&A § ____.12(g)(4)(iii)–4 is not exhaustive.

In response to these comments, the Agencies are adopting a new Q&A § ____.12(g)–4. This new Q&A explains that examples included throughout the Questions and Answers are not exhaustive; rather, the Agencies provide examples to illustrate the types of activities that may qualify for consideration under a particular provision of the regulations. Nonetheless, the Agencies emphasize that the examples that are expressly provided are not the only activities that might receive CRA consideration. In addition, new Q&A § ____.12(g)–4 explains that financial institutions may receive consideration for a community development activity, such as a qualified investment, if it serves a similar community development purpose as an activity described in an example related to a different type of community development activity, such as a community development loan. If a financial institution can demonstrate that an activity it has undertaken has a primary purpose of community development and meets the relevant geographic requirements, that activity should receive CRA consideration.

The Agencies considered whether the example pertaining to a new or rehabilitated communications infrastructure should be added to any other Q&As, such as Q&A § ____.12(g)(4)(iii)–3, but declined to add the example to any other Q&As. The Agencies believe that new Q&A § ____.12(g)–4, described above, should provide guidance as to whether a new or rehabilitated communications infrastructure might receive CRA consideration in other contexts. The Agencies do not believe it is necessary to add the same example to any other Q&As.

Some industry and community organization commenters, as well as the U.S. Environmental Protection Agency (EPA), requested that the Agencies add additional examples of activities that qualify for consideration as activities that revitalize or stabilize underserved nonmetropolitan middle-income geographies. For example, the EPA suggested expanding Q&A § ____.12(g)(4)(iii)–4 to address renewable energy facilities, which it posited could be considered "public services." (As discussed below, loans to finance certain renewable energy facilities has been added to the examples of community development loans in Q&A § ____.12(h)–1.) Consistent with the explanation in new Q&A § ____.12(g)–4, if a financial institution were to submit information demonstrating that financing or investing in renewable energy facilities qualifies for CRA consideration under, for example, 12 CFR ____.12(g)(4)(iii), or any of the other provisions within the definition of community development, then the financial institution would receive consideration for the activity. Therefore, the Agencies are not expressly adding a reference to renewable energy facilities to the list of examples in Q&A § ____.12(g)(4)(iii)–4.

Other commenters suggested that loans enabling flood control measures should be considered as an example of a community development loan. Although these comments were offered as a suggestion for an example of a community development loan in connection with Q&A § ____.12(h)–1, the Agencies believe that the commenters' suggestion of a new or rehabilitated flood control measure is another example of essential infrastructure that could qualify as an activity that revitalizes or stabilizes an underserved nonmetropolitan middle-income geography. As such, the Agencies have added the following new example in Q&A § ____.12(g)(4)(iii)–4: "a new or rehabilitated flood control measure, such as a levee or storm drain, that serves the community, including low- and moderate-income residents."

iii. Community Development Loans

The Agencies' CRA regulations define "community development loan" to mean a loan that has community development as its primary purpose. *See* 12 CFR ____.12(h). Existing Q&A § ____.12(h)–1 provides examples of community development loans. The Agencies proposed to add a new example of loans to finance certain renewable energy or energy-efficient technologies. The proposed example was intended to clarify that such loans may be considered as community development loans when the renewable energy or energy-efficiency improvements help reduce operational costs and maintain the affordability of single-family or multifamily housing or community facilities that serve low- and moderate-income individuals.

The Agencies received 43 distinct comments and 917 form letters addressing the proposed example in Q&A § ____.12(h)–1. Industry and community organization commenters, as well as commenters representing environmental organizations, generally supported adding the proposed example to the Q&A. However, a few community organization commenters expressed differing opinions regarding how the Agencies proposed to describe that an indirect benefit from renewable energy improvements would be considered. A few community organization commenters believed that the benefit to low- or moderate-income households or geographies should be more clear and direct. These commenters asserted that loans financing renewable energy or energy-efficiency initiatives should be required to result in a demonstrable reduction in the operating or maintenance cost for affordable housing or community facilities serving low- or moderate-income individuals in order to qualify for CRA consideration as community development loans. In response to these comments, the Agencies agree that there should be a discernible benefit to the affordable housing or community facilities serving low- or moderate-income individuals. Thus, the Agencies have revised the example in Q&A § ____.12(h)–1 to remove the reference to "indirect benefit." However, to provide further clarification, the Agencies have added an example illustrating how renewable energy facilities could benefit low- or moderate-income individuals by reducing a tenant's utility cost or the cost of providing utilities to common areas in an affordable housing development.

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[10] *See* 12 CFR ____.12(g)(4)(iii).

In addition, a number of commenters representing the renewable energy industry asked the Agencies to consider renewable energy facilities that are not attached directly on the affordable housing or community services facility, explaining that this approach could be more efficient, technologically simpler, or less costly if a particular building site is not oriented to optimize renewable energy generation. In response to these comments, the Agencies have revised the example in the final Q&A to clarify that a renewable energy project may be located on-site or off-site. This clarification would apply, for example, to a community-scale or micro-grid renewable energy facility or solar panels placed on carports instead of being physically mounted on the main building, so long as the benefit from the energy generated is provided to an affordable housing project or a community facility that has a community development purpose. To demonstrate that activities related to a renewable energy facility or project have a primary purpose of community development, an institution may provide a copy of the contractual agreement, such as a lease, power purchase agreement, or energy service contract, that allocates energy or otherwise reduces energy cost to benefit affordable housing or a community facility that serves low- or moderate-income individuals.

The EPA suggested adding "revitalizing a contaminated property by installing renewable energy" to the list of examples of community development loans in the revision of Q&A § ____.12(h)–1. A community development loan must have a primary purpose of community development (*see* Q&A § ____.12(h)–8). The Agencies do not believe it is clear that revitalizing a contaminated property by installing renewable energy facilities would always have a primary purpose of community development, as defined in 12 CFR ____.12(g). Therefore, the Agencies have not added this particular example.

Several renewable energy-related industry commenters discussed the job creation and job training aspects of installing renewable energy improvements and requested greater CRA consideration of the impact of jobs during the construction phase. The agencies note that Q&A § ____.12(h)–5, in offering guidance on community development activities that revitalize or stabilize a low- or moderate-income geography, states that some activities provide only indirect or short-term benefits to low- or moderate-income individuals and, as such, do not receive CRA consideration. Construction jobs are used as an illustration of this type of short-term benefit. Consistent with this guidance, the Agencies do not believe that additional consideration should be given to short-term job creation related to the installation of renewable energy improvements benefitting affordable housing or a community facility that serves low- or moderate-income individuals and are not amending the Q&A as suggested by the commenters.

A few renewable energy-related industry commenters suggested that CRA consideration should be given for loans to low- or moderate-income homeowners to install renewable energy facilities or energy-efficient improvements. A loan to a homeowner for these purposes would be considered as a consumer loan or home mortgage loan. Under the existing regulation and guidance, these loans may be considered in an institution's CRA evaluation under the lending test relevant to the particular institution, so the Agencies have not made any additional revisions to the Questions and Answers in response to this comment.

One environmental organization suggested broadening the proposed language in Q&A § ____.12(h)–1 to expressly cover energy efficiency improvements in schools. The Agencies believe that inclusion of this language in Q&A § ____.12(h)–1 is unnecessary. A school that primarily serves low- or moderate- income students could be considered as a community facility, and a loan for energy efficiency improvements at that school would qualify as a community development loan, consistent with the example in the revised Q&A.

A number of community organization commenters suggested broadening the language in Q&A § ____.12(h)–1 to include water conservation improvements. The Agencies agree that water conservation improvements can promote sustainable affordable housing or community facilities serving low- or moderate-income individuals by lowering operating costs and, accordingly, have modified the example to include water conservation. In addition, activities related to water conservation improvements may also qualify as having a different community development purpose if an institution were to maintain information demonstrating that the activity meets the applicable community development definition as explained in new Q&A § ____.12(g)–4.

Although some commenters also suggested adding flood control improvements to the example in Q&A § ____.12(h)–1, the Agencies concluded that financing for flood control improvements may more appropriately be considered as essential infrastructure addressing the need for revitalization and stabilization of underserved nonmetropolitan middle-income geographies. *See* Q&A § ____.12(g)(4)(iii)–4.

The final paragraph of existing Q&A § ____.12(h)–1 stated that the rehabilitation and construction of affordable housing or community facilities may include the abatement or remediation of environmental hazards, and provided lead-based paint as an example. The Agencies received many comments from community and environmental organizations suggesting the inclusion of more explicit enumeration of several additional examples of environmental hazards and have added to the example "asbestos, mold, or radon" as other examples of environmental hazards that may be abated or remediated as part of a rehabilitation or construction project.

One renewable energy-related industry commenter noted that the discussion in the preamble of the September 2014 **Federal Register** notice addressing the proposed revision to Q&A § ____.12(h)–1 may affect certain energy financing programs. The

Agencies reiterate that all loans considered in an institution's CRA evaluation, including loans that finance renewable energy or energy-efficient technologies, must be consistent with the safe and sound operation of the institution and should not include features that could compromise any lender's existing lien position.

The Agencies want to make clear that the addition of this example does not expand the definition of community development, but rather clarifies that consideration will be given for loans financing renewable energy facilities or energy-efficient improvements in affordable housing or community facilities that otherwise meet the existing definition of community development.

B. Lending Test—Innovative or Flexible Lending Practices

The CRA regulations provide that a financial institution's lending performance is evaluated by, among other things, an institution's "use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies." *See* 12 CFR ____.22(b). Existing guidance contained in Q&A § ____.22(b)(5)–1 provides two examples that illustrate the range of practices that examiners may consider when evaluating the innovativeness or flexibility of an institution's lending practices. The Agencies believed that the current guidance would benefit from additional examples of innovative or flexible lending practices and therefore, proposed to expand the list of examples.

First, the Agencies proposed to revise Q&A § ____.22(b)(5)–1 to emphasize that an innovative or flexible lending practice is not required to obtain a specific rating, but rather is a qualitative consideration that, when present, can enhance a financial institution's CRA performance. Second, the Agencies proposed to explain that examiners will consider whether, and to what extent, the innovative or flexible practices augment the success and effectiveness of the institution's lending program. Third, the Agencies proposed two new examples of innovative or flexible lending practices. The first example described small dollar loan programs as an innovative or flexible practice when such loans are made in a safe and sound manner with reasonable terms, and are offered in conjunction with outreach initiatives that include financial literacy or a savings component. A small dollar loan program currently receives consideration under the lending test and, therefore, the guidance already acknowledges these programs as a type of lending activity that is likely to be responsive in helping to meet the credit needs of many communities. *See* Q&A § ____.22(a)–1. However, the Agencies believed that outreach initiatives offered in conjunction with small dollar loan programs improve the success of those affiliated lending programs in meeting the credit needs of low- and moderate-income individuals and communities and, therefore, merit qualitative consideration as an example of an innovative or flexible lending practice.

The second example proposed by the Agencies described mortgage or consumer lending programs that utilize alternative credit histories in a manner that would benefit low- or moderate-income individuals. The Agencies believed that considering alternative credit histories to supplement conventional trade line information with additional information about the borrower, such as rent and utility payments, could provide some additional creditworthy low- or moderate-income individuals an opportunity to gain access to credit, consistent with safe and sound underwriting practices. The Agencies also solicited comment on whether the proposed guidance was sufficient to encourage institutions to design more innovative and flexible lending programs that are responsive to community needs; whether the benefits of using alternative credit histories outweighed any concerns; and if this additional guidance would better enable examiners and institutions to identify those cases in which alternative credit histories benefit low- or moderate-income individuals.

The Agencies received 87 comments addressing the proposed revisions and the three related questions the Agencies posed for comment. Because commenters' more general observations also addressed the three questions, their responses to the questions are integrated into the broader discussion of the comments received by the Agencies.

Most commenters were supportive of the Agencies' intent to clarify how examiners evaluate an institution's innovative or flexible lending practices. However, several commenters representing both the banking industry and community organizations expressed some concerns about the revisions, as discussed more fully below.

A few industry commenters asked the Agencies to further clarify that innovative activities, such as small dollar lending programs and alternative credit histories, are not required to obtain a specific CRA rating, and had concerns despite the revision proposed by the Agencies intended to address this issue. The Agencies have revised the introductory paragraph of the final Q&A to make clearer that innovative or flexible lending practices are not required to obtain a specific CRA rating. In addition, the final Q&A is revised to cross-reference Q&A § ____.28–1, which explains how innovativeness is considered in the rating process. Current Q&A § ____.28–1 explicitly states, among other things, that the lack of innovative lending practices will not result in a "Needs to Improve" CRA rating. Rather, the guidance notes that the use of innovative lending practices may augment the consideration given to an institution's performance under the quantitative criteria, resulting in a higher performance rating.

One industry commenter addressed the Agencies' proposed language stating that examiners will consider whether, and the extent to which, innovative or flexible practices augment the success and effectiveness of an institution's lending program. This commenter questioned whether the proposed guidance would be sufficient to help examiners or bankers understand and identify innovative or flexible lending activities since examiner discretion determines what is considered "innovative" or "flexible." The Agencies recognize that the terms "innovative" and "flexible" are qualitative in nature and, thus, examiner judgment is needed to assess the unique characteristics and differences in an institution's lending programs. However, the Agencies believe additional guidance concerning what constitutes an innovative activity would be helpful to the review process undertaken by examiners. Bankers and examiners may also find additional guidance in new Q&A § ____.21(a)–4, discussed in further detail below, which explains, among other things, that "innovative activities are especially meaningful when they emphasize serving, for example, low- or moderate-income consumers or distressed or underserved nonmetropolitan middle-income geographies in new or more effective ways." Although examiner judgment and discretion remain in determining what lending practices are deemed innovative or flexible, the Agencies believe the additional guidance in Q&A § ____.21(a)–4 provides further clarification on when an activity should be considered innovative or flexible.

Most commenters addressing proposed Q&A § ____.22(b)(5)–1 commented on the two examples proposed by the Agencies. Concerning the small dollar loan example, most community organization commenters recognized that such programs could be a feasible alternative to higher-cost loans offered by payday lenders. Industry commenters were also supportive of small dollar lending programs. For example, one industry commenter stated that small dollar loans are a path for a bank's clients with thin credit files or a lack of credit history to build or establish a credit score. Nevertheless, some community organization commenters expressed concern that the proposed example on small dollar loans did not make reference to any consumer protection standards.

In particular, one state agency expressed concern that the small dollar loan example did not sufficiently emphasize consumer protection and the safety and soundness aspects of individual small dollar loans. This commenter suggested that the Agencies consider adding the phrase "based on a borrower's ability to repay" to the small dollar loan example because it would emphasize that small dollar loans made in a safe and sound manner are evaluated with respect to individual loans and not the entire portfolio. Similarly, several community organization commenters asked that the Agencies give CRA consideration for small dollar loan programs only if the loans are safe and sound alternatives to high-cost predatory programs.

In response to these comments, the Agencies are adopting the small dollar loan program example largely as proposed with a revision to ensure consistency with Q&A § ____.22(a)–1.

Finally, one industry commenter requested that the Agencies clarify the term "reasonable terms" in the context of small dollar lending programs. This commenter expressed concern that "reasonable terms" was undefined and, thus, would add confusion as to what would receive CRA consideration. The Agencies note that whether a lending program has "reasonable terms" would depend on the facts and circumstances and, therefore, defining the term would not be practicable.

Most community organization commenters were supportive of the proposed new example addressing consideration of alternative credit histories as an innovative or flexible lending practice. Several community organization commenters, however, expressed concern over the risk of using certain alternative data sources, such as social media, checking account history, voter registration records, and criminal convictions, to establish credit history. According to these commenters, such data sources provide no predictive value, but could have a disproportionately negative impact on low- or moderate-income individuals and people of color. These commenters suggested that the Agencies clarify the types of data sources that should be used in alternative credit history reports that could be considered innovative, but that would not have a negative impact on low- or moderate-income individuals.

Industry commenters were also supportive of the proposed example concerning alternative credit histories. A few industry commenters acknowledged that the use of alternative credit histories could be effective in expanding access to credit to low- or moderate-income individuals. However, these industry commenters believed that access to credit should be balanced against safety and soundness considerations. These industry commenters urged the Agencies to work closely with each other to provide a consistent message regarding the activities that could be innovative and flexible while ensuring delivery in a safe and sound manner.

The Agencies are finalizing the example addressing consideration of alternative credit histories largely as proposed with clarifying revisions based on comments received. The Agencies agree with commenters that certain data sources provide little or no predictive value. Hence, the Agencies intend to consider an institution's use of alternative credit histories that are consistent with safe and sound banking practices and that would benefit *otherwise creditworthy* low- or moderate-income individuals who would otherwise be denied credit. Individuals that may benefit from such programs are those who may not qualify for credit based on the use of conventional credit bureau reports because they have little, or no, reportable credit history with the national credit bureaus (hence a credit denial due to a low, or no, credit score with the national credit bureaus), but have a timely and consistent record of paying obligations (such as rent and utility bills). The Agencies believe that the use of alternative credit histories to supplement (not substitute for) the institution's traditional underwriting programs, may open opportunities to some creditworthy low- or moderate-income individuals to gain access to credit. Accordingly, the Agencies have modified the example to clarify that alternative credit histories should be used to evaluate low- or moderate-income individuals who lack sufficient conventional credit histories and who would be denied credit based on the institution's traditional underwriting standards. Further, when such a program is used to demonstrate that consumers have a timely and consistent record of paying their obligations, the program may be considered an innovative or flexible practice that augments the success and effectiveness of the lending program. The Agencies note that, similar to the small dollar loan program example and the other examples in this Q&A, the use of alternative credit histories as an innovative or flexible lending practice is not required for the financial institution to obtain a specific CRA rating. *See* Q&A § ____.28–1.

Finally, the Agencies revised the introductory paragraph of this Q&A to make clear that, although many financial institutions have used innovative or flexible lending practices, such as a small dollar loan program or consideration of alternative credit histories, to customize loans to their customers' specific needs in a safe and sound manner and consistent with statutes, regulations, and guidance, such practices are not required to obtain a specific CRA rating. Further, the CRA regulations provide that a financial institution is not required to make loans or investments or to provide services that are inconsistent with safe and sound operations. Financial institutions are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income geographies or individuals only if consistent with safe and sound operations. *See* 12 CFR ____.21(d).

C. Service Test

i. Availability and Effectiveness of Retail Banking Services

The CRA regulations provide that the Agencies evaluate the availability and effectiveness of a financial institution's systems for delivering retail banking services under the service test pursuant to four criteria: (1) The current distribution of the institution's branches among low-, moderate-, middle-, and upper-income geographies; (2) the institution's record of opening and closing branches, particularly those located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals; (3) the availability and effectiveness of alternative systems for delivering retail banking services in low- and moderate-income geographies and to low- and moderate-income individuals; and (4) the range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies.

The Agencies proposed to revise current Q&A § ____.24(d)–1, which addresses how examiners should evaluate the availability and effectiveness of an institution's systems for delivering retail banking services. Specifically, the Agencies proposed to delete the statements that "performance standards place primary emphasis on full-service branches" and that alternative delivery systems are considered "only to the extent" that they are effective alternatives in providing needed services to low- or moderate-income geographies and individuals. The proposal was intended to encourage broader availability of alternative delivery systems to low- or moderate-income geographies and individuals without diminishing the value full-service branches offer to communities.

The Agencies received 41 comments on proposed revisions to Q&A § ____.24(d)–1. Nearly all of the industry commenters supported the revision, including commenters that stressed the continued importance of branches to the communities they serve. Some industry commenters, however, voiced concern about how the Agencies would implement the revision and asked for further clarification on how examiners would weigh branches and alternative delivery systems and utilize performance context considerations in rating the different delivery systems' performance under the service test. In contrast, almost all community organization commenters opposed the proposed revisions, asserting that branches continue to be uniquely important to low- and moderate-income neighborhoods and individuals, elderly customers, and local businesses. Many of these community organization commenters highlighted the importance of face-to-face contact in order to overcome language barriers and effectively provide essential financial services, such as opening accounts, applying for loans, and explaining terms and conditions. These commenters believed the proposed changes regarding how examiners should weigh branches and alternative delivery systems would result in more branches being closed. Moreover, these commenters stated that the proposed revisions to Q&A § ____.24(d)–1 would not resolve the CRA regulations' outdated definition of assessment area.

In consideration of the comments received, the Agencies are withdrawing the proposed revisions to Q&A § ____.24(d)–1 to avoid the unintended inference that branches are less important in providing financial services to low- and moderate-income geographies. However, the Agencies are making a minor revision to the Q&A to remove references to automated teller machines ("ATMs") as the only example of alternative delivery systems to acknowledge that many other alternative delivery channels are utilized by financial institutions. The Agencies note that other Q&As being finalized in this document provide additional guidance on how examiners will evaluate criteria under the retail service test to ensure that appropriate consideration is given to branches, alternative delivery systems, and financial services tailored to meet the needs of low- and moderate-income individuals or geographies. *See* Q&As § ____.24(d)(3)–1 and § ____.24(d)(4)–1.

ii. Alternative Systems for Delivering Retail Banking Services

The Agencies proposed to revise Q&A § ____.24(d)(3)–1, which addresses how examiners evaluate the availability and effectiveness of alternative delivery systems in the context of the retail service test. The proposed revisions were responsive to suggestions that the Agencies update the guidance to reflect technological advances used to deliver retail banking services by: (1) Adding examples of such technologically advanced systems, even though the examples were not, and are not, intended to limit consideration of new methods as technology evolves; and (2) providing additional guidance on how examiners will evaluate the availability and effectiveness of alternative delivery systems.

Proposed Q&A § ____.24(d)(3)–1 identified additional factors that examiners may consider when evaluating whether a financial institution's alternative delivery systems are available and effective in delivering retail banking services in low- and moderate-income geographies and to low- and moderate-income individuals. These proposed factors included: (1) Ease of access, whether physical or virtual; (2) cost to consumers, as compared to other delivery systems; (3) range of services delivered; (4) ease of use; (5) rate of adoption; and (6) reliability of the system. The proposed Q&A further explained that examiners will consider any information an institution maintains and provides to examiners to demonstrate that the institution's alternative delivery systems are available to, and used by, low- and moderate-income individuals, such as data on customer usage or transactions.

The Agencies received 41 comments on the proposed Q&A § ____.24(d)(3)–1. Commenters generally believed the proposed factors were reasonable and sufficiently flexible. Community organization commenters emphasized the importance of determining whether alternative services and products were not just offered, but adopted and used consistently by consumers. These commenters suggested that the cost of products is most relevant in the consideration of whether an alternative delivery system is available to, and used by, low- and moderate-income individuals.

Some community organization commenters suggested that the Agencies refrain from placing too much emphasis on alternative delivery systems until usage data can be accessed and used by the public to independently monitor the industry's performance. Furthermore, these commenters suggested that the Agencies clarify that financial institutions will *not* receive CRA consideration for serving low- or moderate-income individuals or areas outside of their assessment areas using online or mobile technology. Conversely, industry commenters focused on the difficulty of evaluating the availability and effectiveness of services based on the income of the recipient because such information is collected only in the context of a loan application.

The Agencies specifically sought comment on whether the factors proposed were sufficiently flexible to be used by examiners as the financial services marketplace evolves, and if other factors should be included. Commenters that addressed this question were largely supportive. Industry commenters indicated that the factors were sufficiently flexible, but noted that additional guidance was needed regarding the use of proxies for income and how the criteria would be weighted. Community organization commenters were also generally supportive of the proposed factors but offered suggestions on how to implement them.

One industry commenter opposed the proposed factor that would evaluate the comparative cost of alternative delivery systems to the consumer because it would give examiners broad discretion when evaluating the pricing of banking services. Other industry commenters suggested that the Agencies provide more clarity regarding how the factors would be weighted. Yet another industry commenter suggested that the Agencies clearly specify that the list of factors is not intended to be exhaustive and requested that the guidance clearly state that there is no regulatory requirement to provide banking services at a reduced cost. Finally, another industry commenter suggested that consideration should be given to the continuum of access channels that an institution provides, rather than comparing services within delivery channels. This commenter further stated that financial institutions providing a full range of access channels should receive greater consideration than mono-line or limited-channel institutions.

Community organization commenters focused on the importance of evaluating the actual impact of financial services on low- and moderate-income communities. These commenters suggested evaluating the sustainability of accounts opened, the range of services offered through alternative delivery systems, and the degree to which they are tailored to meet the needs of low- or moderate-income individuals. In addition, some community organization commenters suggested that the Agencies provide additional explanation on the "ease of access" factor to include consideration of language access, disability accommodation, and ability to use a system with alternative forms of identification.

One commenter, a public policy organization, supported the proposed factors, but suggested that they be applied to determine the effectiveness of branches as well as alternative delivery systems. This commenter stated that high-cost or inconvenient branches are no more beneficial than poorly utilized alternative delivery platforms, and asserted that the Agencies' objective should be to encourage high-quality service delivery through both branches and alternative channels. This commenter also stated that the use of intermediaries, such as community-based organizations that provide face-to-face interaction with customers, should be considered as an effective substitute for branch activity.

In general, the commenters agreed that the factors proposed are reasonable and sufficiently flexible. The Agencies are finalizing the proposed factors in final Q&A § ____.24(d)(3)–1 largely as proposed, but with two modifications. First, to address commenters' concern that availability of alternative delivery systems alone does not demonstrate a system's responsiveness to community needs, the Agencies have revised the factor regarding the rate of adoption to read "the rate of adoption *and use*" (emphasis added). Second, the Agencies clarified the language regarding the cost to consumers as compared with *the bank's* other delivery systems, as discussed more fully below.

The Agencies did not include additional explanation to the "ease of access" factor, as suggested by some commenters, but note that evaluation of "ease of access" could include consideration of language access, disability accommodation, and the ability to use a system with alternative forms of identification. Similarly, the Agencies did not revise the final Q&A to address how the various factors will be weighted since the availability and applicability of information regarding each factor will vary depending on the type of delivery system under consideration and the performance context of the institution. The factors cited in the final Q&A are examples of information that is relevant to the evaluation of whether alternative delivery systems are available and effective, and they are meant to be flexible.

The Agencies did not revise the guidance to address the comment suggesting that the proposed measures of availability and effectiveness of alternative delivery systems should be made applicable to branches and third-party service providers. The Agencies share the commenter's view that financial institutions should provide high-quality service delivery overall; however, the measures of availability and effectiveness in Q&A § ____.24(d)(3)–1 were designed to evaluate alternative delivery systems. As provided in the Interagency CRA Examination Procedures, examiners assess the quantity, quality, and accessibility of the financial institution's service delivery systems provided in low-, moderate-, middle-, and upper-income geographies. Examiners also consider the degree to which services are tailored to the convenience and needs of each geography (*e.g.*, extended business hours, including weekends, evenings, or by appointment, providing bilingual services in specific geographies, etc.).

The second question on which the Agencies requested comment asked about the types of information routinely maintained by financial institutions that would be useful to demonstrate the availability and effectiveness of its alternative delivery systems to low- or moderate-income individuals. One industry commenter described the data that it has begun to collect and retain to comprehensively assess all delivery systems, including customer complaint metrics, cost of delivery (including third-party costs), new account/product volume, account/product closure volume, current accounts/product volume, and Service Level Agreements metrics (uptime/downtime). Other industry commenters stated that financial institutions do not collect income information from customers and most suggested that the income level of the census tract where the customer resides is the best available proxy for income. Another industry commenter counseled against any effort to collect income information when opening deposit accounts, asserting that opening a bank account needs to be as simple as possible to increase access to banking services. This commenter believed that the more questions a financial institution asks, the fewer people would finish the process and, more importantly, that income information collected in this way would quickly become stale and statistically invalid.

One industry commenter suggested that some financial institutions may maintain information, such as internal operations reports, industry rankings, and customer surveys, that would be helpful in understanding their performance context, but, since the types of information that institutions maintain vary widely, such information would be difficult to use for anything other than context. A community organization commenter suggested that examiners evaluate the frequency of transactions, adoption and attrition rates, as well as any geographic and income data available.

Two commenters addressed the information available regarding the reliability of alternative delivery systems. The first, representing a community organization, suggested that examiners evaluate the alternative delivery systems' ability to handle peak transaction volumes, the frequency of system crashes, the number of service shut downs for system maintenance, and the information security of systems. The other comment, from a financial institution, suggested that the Agencies provide specific guidance on, and examples of, the types of information that might be relevant to the evaluation of a system's reliability.

The comment letters indicated that the types of information collected and maintained by financial institutions that would be relevant to an evaluation of the availability and effectiveness of alternative delivery systems vary widely. The Agencies, therefore, are retaining the proposed language stating that examiners will consider any information that an institution maintains and provides to demonstrate the availability and effectiveness of its alternative delivery systems to low- or moderate-income individuals.

Third, the Agencies asked what other sources of data and quantitative information examiners could use to evaluate the proposed factors and whether financial institutions have such data readily available for examiners to review. One industry trade association commenter suggested that market studies be used to determine alternative delivery systems' usage because income data is not available. Another industry commenter suggested that the interagency examination procedures be modified to require that examiners gather cost data from advertisements, brochures, online product lists, and similar sources to compare service costs across banks and within broad geographic areas. This commenter also suggested that examiners should gather information from the community regarding the cost of services locally in the course of examinations.

A community organization commenter noted the lack of useful data regarding the actual geographic location of a person or business holding deposits and suggested that the Summary of Deposits[11] information collected by the FDIC be improved to provide better data regarding depositor location. Another community organization commenter suggested that examiners evaluate punitive fees, prohibitive minimum balances, and narrow risk assessments associated with bank products. A third community organization commenter suggested that examiners refer to online sources to provide cost comparisons of products across providers. This commenter also suggested that examiners consider a comparison of costs relative to other banks in the assessment area and the industry overall. Still another community commenter focused on how prepaid cards could be evaluated for effectiveness, suggesting that examiners evaluate whether the cardholder's credit score had improved as a measure of whether the card helped accountholders save money, build credit, and improve financial literacy. This commenter also suggested that income could be estimated from direct deposits of employment checks.

The Agencies found these comments helpful in thinking about the types of information that may be useful in evaluating the availability and effectiveness of alternative delivery systems. Moreover, the Agencies noted that the comments, particularly those related to determining the relative cost of alternative delivery systems, suggest that the distinction between delivery systems and financial products is not clear. For example, many commenters focused on how the costs of financial products tailored to meet the needs of low- and moderate-income customers, such as prepaid cards and low-cost checking accounts, should be evaluated, rather than addressing information that could be used to determine the relative costs of delivery systems, such as usage or access fees for online accounts and mobile banking platforms.

In order to more clearly distinguish between delivery systems and financial products tailored to meet the needs of low- or moderate-income individuals, the Agencies have revised Q&A § ____.12(i)–3, which lists examples of community development services, to remove from that list any examples of retail banking services that are tailored to meet the needs of low- or moderate-income individuals. This revised Q&A is discussed more fully below under III.A.i. However, these examples of retail services will continue to be given consideration under the service test as provided pursuant to 12 CFR ____.24(d)(4).

The Agencies have also added a new Q&A § ____.24(d)(4)–1 addressing how examiners evaluate whether retail services are tailored to meet the needs of geographies of different income levels. The Agencies are adopting Q&A § ____.24(d)(4)–1 in response to the many comments received regarding how examiners evaluate alternative delivery systems. Many of these commenters indicated that some confusion exists in distinguishing alternative delivery systems from financial products that are tailored to meet the needs of low- or moderate-income geographies and individuals. The Agencies believe that this new guidance makes clear that, in addition to evaluating the range of services provided in geographies of different incomes, examiners will also review any other information provided by the institution to demonstrate that its services are tailored to meet the needs of its customers in the various geographies of its assessment area(s). The final guidance further explains that this information may include data regarding the costs and features of loan and deposit products, account usage and retention, geographic location of accountholders, the availability of information in languages other than English, and any other relevant information maintained by the institution.

Fourth, the Agencies asked whether examiners should evaluate the cost of alternative delivery systems to consumers as compared with other delivery systems, as well as the range of services delivered relative to other delivery systems, (i) offered by the institution, (ii) offered by institutions within the institution's assessment area(s), or (iii) offered by the banking industry generally. Two industry commenters stated that an evaluation of the cost to consumers compared to other delivery systems is best evaluated within the specific context of each financial institution. One of these commenters suggested that it would be unreasonably burdensome to expect an institution to survey and monitor costs related to other institutions' delivery systems. One industry commenter suggested that it would be preferable to evaluate the cost to consumers within each assessment area, recognizing that examiners are required to reach a conclusion on a financial institution's performance in each of its assessment areas. One community organization commenter stated that the cost to consumers of a particular delivery system should not be considered along with other factors, such as the rate of adoption and sustained use. Another community organization commenter asserted that examiners should consider the total cost of products because fees are a primary factor preventing households from obtaining bank products and retaining banking relationships.

After reviewing the comments received in response to this question, the Agencies agree that it would be most appropriate to compare the costs of a financial institution's alternative delivery systems with its other delivery systems because of significant differences in size, capacity, and business strategy among institutions. As a result, the Agencies have revised the final Q&A to clarify that costs of alternative delivery systems will be compared to the financial institution's other delivery systems.

Lastly, the Agencies asked whether the proposed revisions adequately address changes in the way financial institutions deliver products in the context of assessment area(s) based on the location of a financial institution's branches and deposit-taking ATMs. While most commenters noted that the proposed Q&A offered helpful guidance on how examiners would evaluate the availability and effectiveness of alternative delivery systems, they also observed that the proposed guidance did not adequately address the trend in the financial services industry toward non-branch delivery systems and its impact on financial institutions' performance within their branch-based assessment areas. Similarly, one industry commenter and one community organization commenter noted that the Agencies should clarify that the evaluation of alternative delivery systems is conducted strictly within the assessment areas defined by branches and emphasize that CRA evaluations do not consider alternative delivery systems outside of an institution's assessment area. Currently, the regulations provide for consideration of alternative delivery systems to the extent that they meet the needs of low- and moderate-income individuals within an institution's assessment area.

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[11] The Summary of Deposits (SOD) is the annual survey of branch office deposits as of June 30 for all FDIC-insured institutions, including insured U.S. branches of foreign banks. This survey has been conducted since 1934. Instructions, survey results, market share reports, contact information, and survey facsimiles are available through the FDIC's Summary of Deposits Web site at *https://www2.fdic.gov/sod/*.

III. New Questions and Answers Proposed in 2014

A. Community Development Services

i. Evaluating Retail Banking and Community Development Services

The Agencies proposed a new Q&A § ____.24(a)–1 to clarify how examiners evaluate retail and community development services under the large institution service test to improve consistency and reduce uncertainty regarding the performance criteria in the service test, and to encourage additional community development services.

For retail banking services, the proposed new Q&A stated that "examiners consider the availability and effectiveness of an institution's systems for delivering banking services, particularly in low- and moderate-income geographies and to low- and moderate-income individuals; the range of services provided in low-, moderate-, middle-, and upper-income geographies; and the degree to which the services are tailored to meet the needs of those geographies." With regard to community development services, the proposed Q&A stated that examiners would consider the extent of community development services offered.

The proposed Q&A sought to differentiate retail services that are also considered community development services under existing Q&A § ____.12(i)–3 (such as low-cost banking accounts targeted to low- or moderate-income individuals) from other retail banking services by stating that examiners would consider whether these retail banking services are responsive and effective in that they "improve or increase access to financial services by low- and moderate-income individuals or in low- or moderate-income geographies." In addition, the proposed Q&A stated that examiners will consider any information provided by the institution that demonstrates community development services are responsive to those needs in order to address concerns that examiners have refused to consider certain types of documentation.

The Agencies solicited comment on all aspects of this proposed new Q&A and specifically requested commenters' views on two questions, as discussed below. The Agencies received 26 comments that were generally supportive of the intent of the Q&A; however, most of these commenters did not believe that the proposed Q&A would achieve its stated purpose. A number of commenters asserted that the proposal did not elevate the relative importance of community development services compared to retail banking services as the Agencies had intended.

The Agencies specifically requested comment on whether the proposed guidance provided sufficient clarity regarding how examiners evaluate retail and community development services under the large institution service test and if not, suggestions that would make the Q&A clearer. Community organization and industry commenters responded generally that the proposed Q&A did not clarify how retail services that benefit low- and moderate-income individuals or geographies and that are described as community development services under existing Q&A § ____.12(i)–3 (such as low-cost transaction accounts and electronic benefit transfer accounts) are evaluated. Rather, at least one commenter believed the proposed Q&A exacerbated the confusion that currently exists. One community organization commenter contended that the Agencies incorrectly labelled low-cost transaction and savings accounts as community development services, rather than as retail banking services. This sentiment was shared by a few other commenters who asserted that basic transaction savings and checking accounts should be considered retail banking services. Commenters noted that, under existing guidance, these services could be classified as either retail banking or community development services.

These commenters and others urged the Agencies to more clearly demarcate the boundaries between retail banking services and community development services in the Questions and Answers. They requested that the Agencies provide specific examples or additional explanation that more clearly identifies which products and services will be evaluated under the retail banking services criteria and which will be considered as community development services.

In reviewing the comments, the Agencies noted that much of the confusion surrounding the distinction between retail banking services and community development services can be traced to the inclusion of retail services or products that are tailored to meet the needs of low- or moderate-income individuals in existing Q&A § ____.12(i)–3, which lists examples of community development services. Of the 11 examples of community development services listed in Q&A § ____.12(i)–3, five are related to branch delivery systems and retail products or services. They involve: (i) providing financial services to low- or moderate-income individuals through branches and other facilities located in low- or moderate-income geographies; (ii) increasing access to financial services by opening or maintaining branches or other facilities that help to revitalize or stabilize a low- or moderate-income geography, a designated disaster area, or a distressed or underserved nonmetropolitan middle-income geography; (iii) providing electronic benefits transfer and point of sale terminal systems; (iv) providing international remittance services; and (v) providing other financial services with the primary purpose of community development, such as low-cost savings or checking accounts, including electronic transfer accounts, individual development accounts, or free or low-cost government, payroll, or other check cashing services.

The Agencies have revised Q&A § ____.24(a)–1 in response to these comments. The final Q&A incorporates, as examples, most of the retail banking services currently listed as community development services under Q&A § ____.12(i)–3. These examples demonstrate retail banking services that improve access to financial services, or decrease costs, for low- or moderate-income individuals. The examples include: low-cost deposit accounts; electronic benefit transfer accounts and point of sale systems; individual development accounts; free or low-cost government, payroll, or other check cashing services; and reasonably priced international remittance services.

In turn, as mentioned above, the Agencies have deleted all of the retail banking services from the list of examples of community development services in Q&A § ____.12(i)–3. This conforming change is intended to address commenters' concerns that including examples of retail banking services, even when such services increase access by, or reduce costs for, low- or moderate-income individuals or geographies, in the list of examples for community development services leads to confusion and inconsistencies regarding how retail services are considered during the evaluation process.

The Agencies are also adopting conforming revisions to existing Q&A § ___.26(c)(3)–1 to ensure these activities are appropriately evaluated in intermediate small institutions. This Q&A addresses what activities examiners consider when evaluating the provision of community development services by an intermediate small institution. To ensure that intermediate small institutions continue to receive consideration under their community development test for retail banking services that increase access by, or reduce costs for, low- or moderate-income individuals, the Agencies are revising existing Q&A § ___.26(c)(3)–1. Although the revised Q&A labels services such as electronic benefit transfer accounts, individual development accounts, and free or low-cost government, payroll, or other check cashing services as retail services, examiners will continue to consider these services when evaluating the provision of community development services for an intermediate small institution when the services increase access by, or reduce costs for, low- or moderate-income individuals. This Q&A is revised to clarify also that branches and other facilities in low- or moderate-income geographies, designated disaster areas, or distressed or underserved nonmetropolitan middle-income geographies are considered as providing community development services under the community development test applicable to intermediate small institutions.

The Agencies made one additional revision based on these comments. Because all of the examples of community development services that now remain in revised Q&A § ___.12(i)–3 are more direct examples of community development services, the Agencies added a cross-reference to Q&A § ___.12(i)–3 in the discussion of community development services in new Q&A § ___.24(a)–1.

In addition to addressing the confusion between retail and community development services, some commenters asserted that proposed Q&A § ___.24(a)–1 did not adequately emphasize the importance of community development services or address concerns that community development services are not given sufficient consideration in the service test relative to retail banking services. A few commenters contended that it remained unclear how the Agencies planned to weigh the relative importance of retail banking and community development services under the service test pursuant to the proposed Q&A. For instance, one industry commenter urged the Agencies to state that community development services will be reflected in the total "score" that is attributed to the service test. Other commenters noted that the Agencies appear to give more consideration to branches than other services when evaluating a large institution's service test performance.

In response to these comments, the Agencies have revised Q&A § ___.24(a)–1 to stress that both retail banking and community development services are important factors under the large institution service test. The revision to the Q&A now states: "Retail banking services and community development services are two components of the service test and are both important in evaluating a large institution's performance." The Agencies note that, as with other aspects of the CRA evaluation process, the relative weighting of retail banking and community development services will depend on the financial institution's performance context.

Several commenters asserted that the proposed Q&A did not sufficiently explain how qualitative factors, such as "effectiveness" and "availability," would be evaluated in the context of retail banking and community development services. These commenters urged the Agencies to provide more specificity by defining key terms or providing concrete examples of the metrics for the key concepts of "availability and effectiveness" and "responsiveness." The Agencies did not revise Q&A § ___.24(a)–1 to address the qualitative factors associated with retail banking and community development services because the Agencies believe other Q&As adequately discuss what is meant by "availability and effectiveness" and "responsiveness." See Q&As § ___.24(d)–1 and § ___.21(a)–3, respectively.

The proposed Q&A stated that examiners will consider any information provided by the institution that demonstrates its community development services are responsive to the needs of low- or moderate-income individuals and low- or moderate-income geographies. Industry commenters were particularly supportive of this proposal. These commenters opined that examiners often impose excessive and unreasonable documentation requirements on institutions to demonstrate that particular products and services offered are responsive to community needs. A few industry and community organization commenters, however, sought further clarification regarding the types of information that would be considered to ensure consistency.

The Agencies specifically requested comment on what types of information financial institutions are likely to maintain that may demonstrate that an institution's community development services are responsive to the needs of low- or moderate-income individuals or in low- or moderate-income geographies. In response to this question, both community organization and industry commenters provided several examples of the types of information that are or should be maintained to demonstrate such responsiveness, including: (i) Documentation evidencing attendance at and involvement in applicable community events; (ii) surveys completed by the financial institution to ascertain community needs; (iii) an institution's records of discussions with community contacts; and (iv) publicly available market research data that support the importance to low- or moderate-income families for a particular type of service, such as financial literacy education services or Volunteer Income Tax Assistance (VITA) tax preparation. Some commenters suggested that the examples would be useful and effective additions to the final Q&A.

The examples offered by commenters are practical suggestions of the types of information institutions could collect or maintain to demonstrate the responsiveness of a community development service. However, the Agencies have chosen not to include the above suggested examples in the final Q&A because some examiners and bankers may view examples as requirements, which could lead to unintended burden on financial institutions. The Agencies remind institutions that they can provide any information to examiners that demonstrates responsiveness.

One community organization commenter opined that community development services are currently defined too narrowly and urged the Agencies to broaden the definition of community development services to include access for small businesses. This commenter contended that financial institutions should receive CRA consideration when loan officers refer a small business applicant to an intermediary when the applicant does not qualify for a bank loan. The Agencies note that Q&A § ___.12(i)–3 already addresses bank referral programs for small businesses and provides that they may qualify for community development service consideration when the financial institution "[provides] technical assistance on financial matters to small businesses or community development organizations, including organizations and individuals who apply for loans or grants under the Federal Home Loan Banks' Affordable Housing Program."

Finally, to reflect more closely the regulatory factors used to evaluate community development services, the Agencies have revised final Q&A § ____.24(a)–1 to state clearly that examiners evaluate the extent of community development services and their innovativeness and responsiveness to community needs.

ii. Quantitative and Qualitative Measures of Community Development Services

The Agencies proposed new Q&A § ____.24(e)–2 to clarify how community development services are quantitatively and qualitatively evaluated. The new Q&A is meant to address inconsistencies in how community development services have been evaluated quantitatively and to respond to concerns that qualitative factors, such as whether community development services are effective or responsive to community needs, receive inadequate consideration. Thus, the proposed Q&A noted that both quantitative and qualitative aspects of community development services are considered during an institution's evaluation.

With regard to quantitative factors, the proposed Q&A stated that examiners assess the extent to which community development services are offered and used by the community. This review is not limited to a single quantitative factor, such as the number of hours that financial institution staff devotes to a particular community development service. Rather, an evaluation of community development services assesses the degree to which those services are responsive to community needs. Finally, the proposed Q&A stated that examiners would consider any relevant information provided by the institution and from third parties to quantify the extent and responsiveness of community development services.

Overall, the Agencies received 19 comments addressing this proposed Q&A. Commenters unanimously supported the Agencies' intent to clarify the quantitative and qualitative factors that examiners review when evaluating community development services to determine whether these services are effective and responsive. However, commenters disagreed on whether the proposed Q&A fully achieved its stated goal of clarifying the assessment of qualitative and quantitative factors or explaining the importance of qualitative factors.

The Agencies specifically requested feedback on whether the proposed guidance sufficiently explained the importance of the qualitative factors related to community development services. Commenters addressing this question were divided, with a slight majority stating the proposed Q&A sufficiently explained the importance of the qualitative factors related to community development services. For example, one community organization commenter found the guidance on examiners taking into consideration the degree to which community development services are responsive to community needs helpful. Other commenters, representing both the industry and community organizations, noted that clarifying that examiners should not rely solely on quantitative factors, such as hours spent by employees conducting financial literacy workshops, was adequate guidance and would help give examiners needed direction to consider other factors besides hours worked when making evaluations of community development services. Other commenters viewed that statement as inadequate. These commenters noted the proposed Q&A mentioned only that the review "is not limited to a single quantitative factor" rather than listing examples of the qualitative factors that examiners could consider. Commenters further noted that the proposed Q&A did not adequately explain qualitative factors, such as responsiveness, and asserted that the proposal could benefit from the inclusion of specific examples of how examiners assess the degree to which services are responsive to community needs.

The Agencies have revised Q&A § ____.24(e)–2 to address some of these comments. The final Q&A incorporates language that, consistent with regulatory factors, more explicitly states that examiners will consider community development services qualitatively by assessing the degree to which those services are innovative or responsive to community needs. The proposed Q&A did not include a reference to "innovativeness," although it is a qualitative factor included in the regulation. *See* 12 CFR ____.24(e). In addition, the Agencies added cross-references to Q&As § ____.21(a)–4 and § ____.21(a)–3, which discuss the qualitative factors "innovativeness" and "responsiveness," respectively, to direct readers to additional guidance regarding these criteria.

Further, the final Q&A discusses how qualitative performance criteria augment the consideration given to community development services by recognizing that community development services sometimes require special expertise and effort on the part of the financial institution and provide benefit to the community that would not otherwise be possible. The final Q&A states that these assessments will depend on the impact of a particular activity on community needs and the benefits received by a community and illustrates this point with an example of a community development service that would be considered responsive to credit and community needs.

In addition, some commenters, representing both the industry and community organizations, asserted that the proposed Q&A did not provide sufficient guidance regarding how the quantitative and qualitative factors would be comparatively weighted under the service test. Some commenters expressed support for a balanced approach to how qualitative and quantitative factors are evaluated in assessing community development service performance, while others indicated a preference for weighting one factor over the other. For instance, one industry commenter preferred using the hours spent by employees performing community development services as the baseline measure, augmented with a review of responsiveness, innovation, leadership, complexity, and flexibility, to the extent that the institution chooses to provide such information. State financial regulator commenters took an opposing position, suggesting that qualitative aspects of community development services should serve as the primary driver in determining whether services are effective and responsive.

The Agencies do not believe it is necessary to revise the Q&A to address these comments. First, the Agencies note that examiners do not use a specific formula when quantitatively and qualitatively evaluating community development services. As with all aspects of an institution's CRA performance evaluation, the performance context of the institution will affect how the qualitative and quantitative factors are considered under the service test. Similarly, some industry commenters asserted that the Q&A should specify how many community development services would be needed in order to obtain a rating of "outstanding" or "satisfactory." However, examiners do not utilize specific benchmarks. Instead, the nature of each community development service and the performance context of the institution are considered.

The proposed Q&A stated that examiners will consider any relevant information provided by the institution or from a third party to quantify the extent and responsiveness of community development services. Industry commenters were particularly supportive of this aspect of the proposal because they viewed it as a flexible policy.

With regard to relevant information, the Agencies specifically asked what types of information financial institutions and third parties would be likely to maintain that may be used to demonstrate the extent to which community development services are offered and used. In response, commenters provided several examples of relevant information that may be available, including: (i) data on the number of low- and moderate-income individuals attending counseling sessions; (ii) demographic information on clients or customers benefitting from a service; (iii) records of the number and types of community development service provided; and (iv) attestations collected via a survey of employees, directors, and officers that tracks hourly involvement in community development services.

Rather than referring to only a single quantitative factor as an example, final Q&A § ____.24(e)–2 includes a list of examples of quantitative factors that examiners may assess to determine the extent to which community development services are offered and used. The expanded list should provide additional clarity and address concerns that examiners and institutions may default to "the number of hours financial institution staff devotes to a particular community development service" as the only quantitative measure of community development services. The final Q&A includes the following additional examples of quantitative factors: (i) The number of low- and moderate-income individuals participating in a community development activity; (ii) the number of organizations served by a community development activity; and (iii) the number of sessions of a community development service activity.

Finally, a community organization commenter suggested that the Agencies revise the proposed Q&A to explicitly state that institutions' funding of community organizations to enable them to collect quantitative data will receive favorable CRA consideration. The commenter asserted that, while quantitative information is necessary in assessing whether a community development service is effective in assisting low- or moderate-income individuals and families to access the financial system, obtaining this information can be very expensive and resource intensive. The commenter maintained that providing an incentive to finance data collection systems in nonprofit organizations would increase the availability and quality of this much needed information. The Agencies note that the CRA regulations allow for the consideration of grants or other funding to nonprofit organizations with a community development purpose as qualified investments or community development loans. Such funding could be used by these recipients for a variety of purposes, including data collection.

B. Responsiveness and Innovativeness

i. Responsiveness

The term "responsiveness" is found throughout the CRA regulations and the Questions and Answers. Generally, the Agencies' regulations and guidance promote an institution's responsiveness to credit and community development needs by providing that the greater an institution's responsiveness to credit and community development needs in its assessment area(s), the higher the CRA rating that is assigned to that institution. *See, e.g.,* 12 CFR ____, appendix A, section (b)(2)(i). Responsiveness is generally a consideration in all of the ratings that the Agencies assign.

The Agencies' Questions and Answers address responsiveness in various contexts. For example, Q&A § ____.21(a)–2 explains that responsiveness is meant to lend a qualitative element to the rating system. Other Q&As state that examiners should give greater weight to those activities that are most responsive to community needs, including the needs of low- or moderate-income individuals and geographies. *See, e.g.,* Q&A § ____.12(g)(4)(ii)–2.

Because the concept of "responsiveness" is utilized in the CRA regulations and Questions and Answers applicable to all covered institutions, the Agencies proposed a new Q&A § ____.21(a)–3 to set forth general guidance on how examiners evaluate whether a financial institution has been responsive to credit and community development needs. The Agencies intended the proposed Q&A to encourage institutions to think strategically about how to best meet the needs of their communities based on their performance context. The proposed new Q&A indicated that examiners would look at not only the volume and types of an institution's activities, but also how effective those activities have been. The proposed Q&A noted that examiners always evaluate responsiveness in light of an institution's performance context. The proposed new Q&A also suggested several information sources that could inform examiners' evaluations of performance context and responsiveness.

The Agencies received 28 public comments addressing the proposed new Q&A. With few exceptions, the commenters were supportive of the Agencies' intent to clarify how examiners evaluate an institution's responsiveness to credit and community development needs. However, a number of commenters, representing both the industry and community organizations, questioned whether the proposed new Q&A would help examiners or bankers understand that a project or program has been responsive to credit and community development needs.

The Agencies requested comment on three questions relating to proposed new Q&A § ____.21(a)–3. First, the Agencies asked whether the proposed new Q&A appropriately highlighted the importance of responsiveness to credit and community development needs and provided a flexible, yet clear, standard for determining how financial institutions would receive consideration. An industry commenter and a community organization commenter agreed that the importance of responsiveness to credit and community development needs was highlighted, but that there was also an increase in subjectivity in the evaluation process and burden to institutions, as well as a shortage of detail. To help clarify how the Agencies review responsiveness and the flexible approach taken, a new sentence was added at the beginning of the answer to provide a road map of the three factors that examiners consider when evaluating responsiveness: quantity, quality, and performance context. The answer then describes each of the three factors.

The Agencies also asked whether there were other sources of information that examiners should consider when evaluating an institution's responsiveness to credit and community development needs. Commenters representing both the industry and community organizations suggested a number of information sources, including targeted outreach to local organizations; local, state, and Federal information compilations; reports and studies by academic institutions; and the Consumer Financial Protection Bureau's (CFPB) complaint database. Two community organization commenters asserted that examiners should be required to review information from all of the sources cited in the proposed Q&A. An industry commenter stated that, although the Agencies should accept information from financial institutions, care must be taken not to require institutions to perform needs assessments or evaluate the institutions on the quality of information they provide, consistent with Q&A § ___.21(b)(2)–1. Another industry commenter suggested that the Agencies should ensure that regulatory requirements, guidelines, and actions by examiners are flexible and do not create unnecessary burden. Two other commenters, one representing the industry and the other a community organization, stated that they appreciated the clarification that examiners should not rely so heavily on quantitative factors. They noted that the unique needs and opportunities in an institution's local community should be the basis for evaluating the institution's performance.

In response to these comments, the Agencies expanded the list of sources of information about credit and community development needs and opportunities that examiners may consider by adding "consumer complaint information." To address commenters' concern that a formal needs assessment will be expected from financial institutions, the Agencies have deleted the reference to an assessment prepared by the institution and have clarified that examiners will consider any relevant information provided to examiners by the financial institution that is maintained by the institution in its ordinary course of business.

Finally, the Agencies asked whether the new Q&A would help a financial institution in making decisions about the community development activities in which it will participate, particularly if those activities benefit individuals or geographies located somewhere in the broader statewide or regional area that includes the institution's assessment area(s), but that may not benefit the institution's assessment area(s). *See* Q&A § ___.12(h)–6. Of the six commenters who addressed this question, five commenters (two representing the industry and three representing community development funds) believed that proposed Q&A § ___.21(a)–3 would not help bankers to determine which community development activities to support. In support of their views, commenters asserted that (i) the requirement to first demonstrate responsiveness to assessment area needs is too vague to cause a change in institutions' investment strategies; (ii) due to increased subjectivity and additional burden of proof in the evaluation process, institutions will likely maintain their focus on assessment area activities; (iii) the proposed Q&A does not provide insight to help institutions make determinations on which community development activities to support; and (iv) a bright line test would be preferable to an evaluation of whether the financial institution has been responsive to credit and community development needs and opportunities. On the other hand, the sixth commenter, representing the industry, stated that the proposed Q&A may encourage financial institutions to focus on community development activities that benefit low- and moderate-income individuals or geographies, disaster areas, and distressed or underserved nonmetropolitan middle-income geographies. This commenter believed that recognizing responsiveness rather than placing all the emphasis on quantitative benchmarks will encourage financial institutions to engage in various community development activities.

To respond to commenters' assertion that new Q&A § ___.21(a)–3, as proposed, would not assist a financial institution in determining whether a community development activity in the broader statewide or regional area that includes the institution's assessment area(s) would receive CRA consideration, the Agencies have added to the final Q&A a new paragraph discussing how examiners will determine whether an institution has been responsive to the credit and community development needs of its assessment area(s). First, examiners will consider as responsive all of the institution's community development activities in its assessment area(s). Examiners will also consider as responsive to assessment area needs any community development activities that support an organization or activity that covers an area that is larger than, but includes, the institution's assessment area(s). If the purpose, mandate, or function of the organization or activity includes serving the institution's assessment area(s), it will be considered responsive to assessment area needs even if the institution's assessment area(s) did not receive an immediate or direct benefit from the institution's participation in the organization or activity. New Q&A § ___.21(a)–3, as adopted, also includes an example of such an investment.

Finally, several industry commenters noted that the proposed new Q&A stated that "activities are particularly responsive to community development needs if they benefit low- or moderate-income individuals, low- or moderate-income geographies, designated disaster areas, or distressed or underserved nonmetropolitan middle-income geographies." They asked whether any activity that has a community development purpose, as defined in the CRA regulations, would be "particularly" responsive. If so, they noted that financing for small businesses or small farms should also be included. And, if not, the Agencies should clarify what is meant by that statement. In addition, two community organization commenters addressed the importance of the "impact" of responsive activities. These commenters asserted that responsiveness must be demonstrated through impact and outcomes in meeting a documented community need. To address these related comments, the Agencies have deleted the statement addressing activities that would be "particularly responsive" that caused the confusion. In its place, the final Q&A explains that, when evaluated qualitatively, some activities are more responsive than others, and that activities are more responsive if they are successful in meeting identified credit and community development needs. The final Q&A also includes an example of two community development activities, one of which would be considered more responsive than the other, to describe this concept.

ii. Innovativeness

The Agencies proposed a new Q&A § ___.21(a)–4 in response to reports about inconsistencies in the types of activities considered innovative and requests from financial institutions that the Agencies provide clarification of the "innovativeness" standard found throughout the CRA regulations. For example, the large institution lending test evaluates the complexity and innovativeness of community development lending and the institution's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies. *See* 12 CFR ___.22(b)(4) and (5). The large institution investment test evaluates the innovativeness or complexity of qualified investments. *See* 12 CFR ___.23(e)(2). Similarly, the large institution service test evaluates the innovativeness and responsiveness of community development services. *See* 12 CFR ____.24(e)(2). The performance criteria in the community development test for wholesale or limited purpose banks include an evaluation of the use of innovative or complex qualified investments, community development loans, or community development services. *See* 12 CFR ____.25(c)(2). Finally, when evaluating a strategic plan, the Agencies evaluate a plan's measurable goals according to the regulatory criteria, all of which mention innovativeness. *See* 12 CFR ____.27(g)(3).

The proposed new Q&A stated that an innovative practice or activity will be considered when an institution implements meaningful improvements to products, services, or delivery systems that respond more effectively to customer and community needs, particularly to the needs of those segments enumerated in the definition of community development. Then, the proposed Q&A addressed innovativeness in terms of an institution's market and customers, specifically stating that innovation includes the introduction of products, services, or delivery systems by institutions, which do not have the capacity to be market leaders in innovation, to their low- or moderate-income customers or segments of consumers or markets not previously served.

The Agencies' proposal stressed that institutions should not innovate simply to meet this criterion of the applicable test, particularly if, for example, existing products, services, or delivery systems effectively address the needs of all segments of the community. The proposed Q&A also indicated that practices that cease to be innovative may still receive qualitative consideration for being flexible, complex, or responsive.

The majority of commenters addressing Q&A § ____.21(a)–4 were largely supportive of the Agencies' intent to clarify how examiners evaluate an institution's innovativeness. Nevertheless, several of the commenters posed questions about the import of "innovativeness" generally, notwithstanding the specific references to that term in the various CRA performance tests.

Rather than focusing on innovativeness, several of the community organization commenters urged the Agencies to address strengthening performance context when evaluating whether the subject CRA activities were responsive to local needs and had a positive demonstrable impact on the communities they were meant to serve. Industry commenters sought language stating that innovativeness is not required, lack of it will not have a negative impact, and, when present, innovativeness will result in positive consideration. These commenters also sought language specifically tying "innovativeness" to the requirement that CRA activities must be consistent with safe and sound banking practices.

With regard to the proposed Q&A statement addressing consideration for entities that do not have the "capacity to be market leaders," commenters had differing points of view. One industry commenter found that statement to be overly broad, open to wide interpretation, and contrary to the intent of the Q&A. This general view was also shared by two other commenters. On the other hand, one community organization commenter was expressly in favor of that statement, although another community organization commenter stated that a financial institution should not receive consideration for innovativeness when bringing another institution's innovative product to its assessment area(s) unless it is doing so in a way that could not have been, or was not otherwise, done.

In response to comments, the Agencies are adopting Q&A § ____.21(a)–4 with revisions to provide additional clarification. As stated above, the Agencies note that "innovativeness" is a regulatory consideration in a variety of performance tests. The Agencies continue to believe that there is a benefit in clarifying the term, while not overemphasizing its importance. The final Q&A continues to make the point that "innovative" practices need to be responsive to community needs but are not required if existing products, services, or delivery systems effectively address the needs of all segments of the community. The final Q&A also adds a cross-reference to Q&A § ____.28–1, which explains how innovativeness is considered in the rating process and states, in part: "The lack of innovative lending practices, innovative or complex qualified investments, or innovative community development services alone will not result in a 'needs to improve' CRA rating. However, under these tests, the use of innovative lending practices, innovative or complex qualified investments, and innovative community development services may augment the consideration given to an institution's performance under the quantitative criteria of the regulations, resulting in a higher performance rating."

With regard to comments we received about innovative products and services already in the market, the Agencies continue to believe that innovativeness could include a financial institution's adoption of products, services, or delivery systems already in the market under certain circumstances. This is especially true for smaller institutions and institutions that have, to date, offered only traditional products, services, or delivery systems. For sake of clarity, the Agencies amended the final Q&A by removing the potentially ambiguous terms "capacity" and "market leader." Specifically, the Agencies replaced the reference to "market leader" with "leaders in innovation" and explained that some financial institutions may not be leaders in innovation "due to, for example, available financial resources or technological expertise."

IV. Technical Corrections

The Agencies also have revised the Questions and Answers to address a number of events that have occurred since the 2010 Questions and Answers were published, including, for example, the elimination of the OTS and the Thrift Financial Report (TFR), changes in data sources for income-level information, and the transfer to the CFPB of rulemaking authority for certain consumer financial laws. The Agencies have made technical changes to a number of Q&As to provide this updated information.

A. Elimination of the OTS

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111–203 (July 21, 2010) (Dodd-Frank Act), transferred powers of the OTS to the OCC, the FDIC, and the Board, and eliminated the OTS. Specifically, among other changes, the Dodd-Frank Act transferred rulemaking and supervisory authority over savings and loan holding companies and supervisory authority over their non-depository subsidiaries to the Board; transferred rulemaking authority over Federal savings associations and state savings associations, and supervisory authority over Federal savings associations, to the OCC; and transferred supervisory authority over state savings associations to the FDIC. *See* 12 U.S.C. 5412–5413; *see also* 12 U.S.C. 2905. The OCC transferred the CRA rules applicable to savings associations from 12 CFR part 563e to 12 CFR part 195. The Agencies' rules are substantially similar throughout so that a general reference to the section and paragraph of the rule (*e.g.*, 12 CFR ____.12(a)) continues to describe the same provision in all four of the rules. However, 12 CFR 195.11(c), which is applicable to savings associations, includes one less paragraph than the rules applicable to national and state banks. As a result, the citation to section 11 of the rule in the related Q&As must separately mention the rule applicable to savings associations. Therefore, the Agencies have changed the references in the two Q&As addressing §§ ___.11(c)(3) & 563e.11(c)(2) to §§ ___.11(c)(3) & 195.11(c)(2), respectively.

B. Elimination of the Thrift Financial Report

In 2010, when the Questions and Answers were last updated, banks filed Call Reports and savings associations filed TFRs. Beginning with the first quarterly filing in 2012, all savings associations began filing Call Reports. The Agencies are removing the references to the TFR in 12 Q&As. One additional Q&A refers to the Uniform Thrift Performance Report (UTPR), which was phased out when savings associations began filing Call Reports. Uniform Bank Performance Reports are now produced for savings associations, so the Agencies have removed the reference to the UTPR in Q&A § ___.26(b)(1)–1. The Agencies have also adopted a consistent citation to the relevant sections of the Call Report and have made revisions to effect those changes where necessary throughout the Questions and Answers.

C. Home Mortgage Disclosure Act (HMDA) Regulation

The Dodd-Frank Act transferred exclusive rulemaking authority to the CFPB for certain consumer financial laws, including the HMDA. The CFPB subsequently published its own rule to implement HMDA, 12 CFR part 1003.[12] Four Q&As referred to home mortgage data collected under the HMDA and provided a citation to the Board's HMDA rule at 12 CFR part 203. The Agencies have updated those citations to refer to the CFPB's HMDA rule at 12 CFR part 1003.

D. Income Level Data Sources

Q&A § ___.12(m)–1 discusses the sources of income level data for geographies and individuals. Beginning with the FFIEC's geographic income data published in 2012, the FFIEC discontinued using decennial census data to calculate geographic income levels and began using the U.S. Census Bureau's American Community Survey (ACS) five-year estimate data. At the same time, the FFIEC announced that it would begin using ACS data to update geographic incomes every five years. Q&A § ___.12(m)–1 has been revised to reflect the current data sources used to calculate income level data for geographies and individuals.

E. Data Reporting

Q&As § ___.42–1, § ___.42–2, and § ___.42–6 address data submission, validation, and software, respectively. The Agencies have revised these Q&As to include updated data submission instructions and the correct Board contact information for submitting questions about CRA data submission, validation, and software.

F. Outdated Reference

Q&A § ___.12(g)(4)–1 advises that the revised definition of "community development," which became effective in 2005 for banks and 2006 for savings associations, is applicable to all institutions. Because this revised definition has been in effect for around 10 years, it has been shortened to omit the historical information about its effective dates. The revised version merely affirms that the definition of "community development" is applicable to all institutions.

G. OCC Address Changes

Q&A Appendix B to Part ___–1 includes OCC-specific contact information. The OCC's headquarters moved in December 2012; thus, the Q&A has been revised to reflect the OCC's new street address, which is to be included in national banks' and Federal savings associations' public notices. In addition, a Web site URL has been added that national banks and Federal savings associations may include in their public notices that will allow interested parties to find information about planned OCC CRA evaluations in upcoming quarters. Similarly, an email address has been added that national banks and Federal savings associations may include in their public notices to which commenters may submit electronic comments about institutions' performance in helping to meet community credit needs.

The text of the final Interagency Questions and Answers follows:

Interagency Questions and Answers Regarding Community Reinvestment

§ ___.11—Authority, Purposes, and Scope

§ ___.11(c) Scope

§§ ___.11(c)(3) & 195.11(c)(2) Certain Special Purpose Institutions

§§ ___.11(c)(3) & 195.11(c)(2)—1: *Is the list of special purpose institutions exclusive?*

A1. No, there may be other examples of special purpose institutions. These institutions engage in specialized activities that do not involve granting credit to the public in the ordinary course of business. Special purpose institutions typically serve as correspondent banks, trust companies, or clearing agents or engage only in specialized services, such as cash management controlled disbursement services. A financial institution, however, does not become a special purpose institution merely by ceasing to make loans and, instead, making investments and providing other retail banking services.

§§ ___.11(c)(3) & 195.11(c)(2)—2: *To be a special purpose institution, must an institution limit its activities in its charter?*

A2. No. A special purpose institution may, but is not required to, limit the scope of its activities in its charter, articles of association, or other corporate organizational documents. An institution that does not have legal limitations on its activities, but has voluntarily limited its activities, however, would no longer be exempt from Community Reinvestment Act (CRA) requirements if it subsequently engaged in activities that involve granting credit to the public in the ordinary course of business. An institution that believes it is exempt from CRA as a special purpose institution should seek confirmation of this status from its supervisory Agency.

§ ___.12—Definitions

§ ___.12(a) Affiliate

§ ___.12(a)—1: *Does the definition of "affiliate" include subsidiaries of an institution?*

A1. Yes, "affiliate" includes any company that controls, is controlled by, or is under common control with another company. An institution's subsidiary is controlled by the institution and is, therefore, an affiliate.

§ ___.12(f) Branch

§ ___.12(f)—1: *Do the definitions of "branch," "automated teller machine (ATM)," and "remote service facility*

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[12] *See* 80 FR 66127 (Oct. 28, 2015).

(RSF)" include mobile branches, ATMs, and RSFs?

A1. Yes. Staffed mobile offices that are authorized as branches are considered "branches," and mobile ATMs and RSFs are considered "ATMs" and "RSFs."

§ ____.12(f)—2: *Are loan production offices (LPO) branches for purposes of the CRA?*

A2. LPOs and other offices are not "branches" unless they are authorized as branches of the institution through the regulatory approval process of the institution's supervisory Agency.

§ ____.12(g) Community Development

§ ____.12(g)—1: *Are community development activities limited to those that promote economic development?*

A1. No. Although the definition of "community development" includes activities that promote economic development by financing small businesses or farms, the rule does not limit community development loans and services and qualified investments to those activities. Community development also includes community- or tribal-based child care, educational, health, social services, or workforce development or job training programs targeted to low- or moderate-income persons, affordable housing for low- or moderate-income individuals, and activities that revitalize or stabilize low- or moderate-income areas, designated disaster areas, or underserved or distressed nonmetropolitan middle-income geographies.

§ ____.12(g)—2: *Must a community development activity occur inside a low- or moderate-income area, designated disaster area, or underserved or distressed nonmetropolitan middle-income area in order for an institution to receive CRA consideration for the activity?*

A2. No. Community development includes activities, regardless of their location, that provide affordable housing for, or community services targeted to, low- or moderate-income individuals and activities that promote economic development by financing small businesses and farms. Activities that stabilize or revitalize particular low- or moderate-income areas, designated disaster areas, or underserved or distressed nonmetropolitan middle-income areas (including by creating, retaining, or improving jobs for low- or moderate-income persons) also qualify as community development, even if the activities are not located in these areas. One example is financing a supermarket that serves as an anchor store in a small strip mall located at the edge of a middle-income area, if the mall stabilizes the adjacent low-income community by providing needed shopping services that are not otherwise available in the low-income community.

§ ____.12(g)—3: *Does the regulation provide flexibility in considering performance in high-cost areas?*

A3. Yes, the flexibility of the performance standards allows examiners to account in their evaluations for conditions in high-cost areas. Examiners consider lending and services to individuals and geographies of all income levels and businesses of all sizes and revenues. In addition, the flexibility in the requirement that community development loans, community development services, and qualified investments have as their "primary" purpose community development allows examiners to account for conditions in high-cost areas. For example, examiners could take into account the fact that activities address a credit shortage among middle-income people or areas caused by the disproportionately high cost of building, maintaining or acquiring a house when determining whether an institution's loan to or investment in an organization that funds affordable housing for middle-income people or areas, as well as low- and moderate-income people or areas, has as its primary purpose community development. See also Q&A § ____.12(h)–8 for more information on "primary purpose."

§ ____.12(g)—4: *Can examples of community development activities discussed in a particular Q&A also apply to other types of community development activities not specifically discussed in that Q&A if they have a similar community development purpose?*

A4. Yes. The Interagency Questions and Answers Regarding Community Reinvestment (Questions and Answers) provide examples of particular activities that may receive consideration as community development activities. Because a particular Q&A often describes a single type of community development activity, such as a community development loan, the corresponding examples are of community development loans. However, because community development loans, qualified investments, and community development services all must have a primary purpose of community development, a qualified investment or community development service that supports a community development purpose similar to the activity described in the context of the community development loan would likely receive consideration under the applicable test. The same would be true if the community development activity described in a particular Q&A were a qualified investment or community development service. For example, Q&A § ____.12(h)–1 provides an example of a community development loan to a not-for-profit organization supporting primarily low- or moderate-income housing needs. Similarly, a grant to the same not-for-profit organization would be considered a qualified investment or technical assistance, such as writing a grant proposal for the not-for-profit organization, would be considered as a community development service. Further if a financial institution engaged in all of these activities, each would be considered under the applicable test. *See* Q&A § ____.23(b)–1.

Moreover, lists of examples included throughout the Questions and Answers are not exhaustive. A Q&A may include examples to demonstrate activities that may qualify under that Q&A, but the examples are not the only activities that might qualify. Financial institutions may submit information about activities they believe meet the definition of community development loan, qualified investment, or community development service to examiners for consideration.

§ ____.12(g)(1) Affordable Housing (Including Multifamily Rental Housing) for Low- or Moderate-Income individuals

§ ____.12(g)(1)—1: *When determining whether a project is "affordable housing for low- or moderate-income individuals," thereby meeting the definition of "community development," will it be sufficient to use a formula that relates the cost of ownership, rental, or borrowing to the income levels in the area as the only factor, regardless of whether the users, likely users, or beneficiaries of that affordable housing are low- or moderate-income individuals?*

A1. The concept of "affordable housing" for low- or moderate-income individuals does hinge on whether low- or moderate-income individuals benefit, or are likely to benefit, from the housing. It would be inappropriate to give consideration to a project that exclusively or predominately houses families that are not low- or moderate-income simply because the rents or housing prices are set according to a particular formula.

For projects that do not yet have occupants, and for which the income of the potential occupants cannot be determined in advance, or in other projects where the income of occupants cannot be verified, examiners will review factors such as demographic, economic, and market data to determine the likelihood that the housing will "primarily" accommodate low- or moderate-income individuals. For example, examiners may look at median rents of the assessment area and the project; the median home value of either the assessment area, low- or moderate-income geographies or the project; the low- or moderate-income population in the area of the project; or the past performance record of the organization(s) undertaking the project. Further, such a project could receive consideration if its express, bona fide intent, as stated, for example, in a prospectus, loan proposal, or community action plan, is community development.

§ ____.12(g)(2) Community Services Targeted to Low- or Moderate-Income Individuals

§ ____.12(g)(2)—1: *Community development includes community services targeted to low- or moderate-income individuals. What are examples of ways that an institution could determine that community services are offered to low- or moderate-income individuals?*

A1. Examples of ways in which an institution could determine that community services are targeted to low- or moderate-income persons include, but are not limited to:

- The community service is targeted to the clients of a nonprofit organization that has a defined mission of serving low- and moderate-income persons, or, because of government grants, for example, is limited to offering services only to low- or moderate-income persons.
- The community service is offered by a nonprofit organization that is located in and serves a low- or moderate-income geography.
- The community service is conducted in a low- or moderate-income area and targeted to the residents of the area.
- The community service is a clearly defined program that benefits primarily low- or moderate-income persons, even if it is provided by an entity that offers other programs that serve individuals of all income levels.
- The community service is offered at a workplace to workers who are low- and moderate-income, based on readily available data for the average wage for workers in that particular occupation or industry (*see, e.g., http://www.bls.gov/bls/blswage.htm* (Bureau of Labor Statistics)).
- The community service is provided to students or their families from a school at which the majority of students qualify for free or reduced-price meals under the U.S. Department of Agriculture's National School Lunch Program.
- The community service is targeted to individuals who receive or are eligible to receive Medicaid.
- The community service is provided to recipients of government assistance programs that have income qualifications equivalent to, or stricter than, the definitions of low- and moderate-income as defined by the CRA Regulations. Examples include U.S. Department of Housing and Urban Development's section 8, 202, 515, and 811 programs or U.S. Department of Agriculture's section 514, 516, and Supplemental Nutrition Assistance programs.

§ ____.12(g)(3) Activities That Promote Economic Development by Financing Businesses or Farms That Meet Certain Size Eligibility Standards

§ ____.12(g)(3)—1: *"Community development" includes activities that promote economic development by financing businesses or farms that meet certain size eligibility standards. Are all activities that finance businesses and farms that meet the size eligibility standards considered to be community development?*

A1. No. The concept of "community development" under 12 CFR ____ .12(g)(3) involves both a "size" test and a "purpose" test that clarify what economic development activities are considered under CRA. An institution's loan, investment, or service meets the "size" test if it finances, either directly, or through an intermediary, businesses or farms that either meet the size eligibility standards of the Small Business Administration's Development Company (SBDC) or Small Business Investment Company (SBIC) programs, or have gross annual revenues of $1 million or less. For consideration under the "size test," the term financing is considered broadly and includes technical assistance that readies a business that meets the size eligibility standards to obtain financing. To meet the "purpose test," the institution's loan, investment, or service must promote economic development. These activities are considered to promote economic development if they support

- permanent job creation, retention, and/or improvement
  - for low- or moderate-income persons;
  - in low- or moderate-income geographies;
  - in areas targeted for redevelopment by Federal, state, local, or tribal governments;
  - by financing intermediaries that lend to, invest in, or provide technical assistance to start-ups or recently formed small businesses or small farms; or
  - through technical assistance or supportive services for small businesses or farms, such as shared space, technology, or administrative assistance; or
- Federal, state, local, or tribal economic development initiatives that include provisions for creating or improving access by low- or moderate-income persons to jobs or to job training or workforce development programs.

The agencies will presume that any loan or service to or investment in a SBDC, SBIC, Rural Business Investment Company, New Markets Venture Capital Company, New Markets Tax Credit-eligible Community Development Entity, or Community Development Financial Institution that finances small businesses or small farms, promotes economic development. (See also Q&As § ____.42(b)(2)–2, § ____.12(h)–2, and § ____.12(h)–3 for more information about which loans may be considered community development loans.)

Examiners will employ appropriate flexibility in reviewing any information provided by a financial institution that reasonably demonstrates that the purpose, mandate, or function of the activity meets the "purpose test." Examiners will also consider the qualitative aspects of performance. For example, activities will be considered more responsive to community needs if a majority of jobs created, retained, and/or improved benefit low- or moderate-income individuals.

§ ____.12(g)(4) Activities That Revitalize or Stabilize Certain Geographies

§ ____.12(g)(4)—1: *Is the definition of "community development" applicable to all institutions?*

A1. The definition of "community development" is applicable to all institutions, regardless of a particular institution's size or the performance criteria under which it is evaluated.

§ ____.12(g)(4)–2: *Will activities that provide housing for middle-income and upper-income persons qualify for favorable consideration as community development activities when they help to revitalize or stabilize a distressed or underserved nonmetropolitan middle-income geography or designated disaster areas?*

A2. An activity that provides housing for middle- or upper-income individuals qualifies as an activity that revitalizes or stabilizes a *distressed* nonmetropolitan middle-income geography or a designated disaster area if the housing directly helps to revitalize or stabilize the community by attracting new, or retaining existing, businesses or residents and, in the case of a designated disaster area, is related to disaster recovery. The Agencies generally will consider all activities that revitalize or stabilize a *distressed* nonmetropolitan middle-income geography or designated disaster area, but will give greater weight to those activities that are most responsive to community needs, including needs of low- or moderate-income individuals or neighborhoods. Thus, for example, a loan solely to develop middle- or upper-income housing in a community in need of low- and moderate-income housing would be given very little weight if there is only a short-term benefit to low- and moderate-income individuals in the community through the creation of temporary construction jobs. (Except in connection with intermediate small institutions, a housing-related loan is not evaluated as a "community development loan" if it has been reported or collected by the institution or its affiliate as a home mortgage loan, unless it is a multifamily dwelling loan. *See* 12 CFR ____.12(h)(2)(i) and Q&As § ____.12(h)–2 and § ____.12(h)–3.) An activity will be presumed to revitalize or stabilize such a geography or area if the activity is consistent with a bona fide government revitalization or stabilization plan or disaster recovery plan. *See* Q&As § ____.12(g)(4)(i)–1 and § ____.12(h)–5.

In *underserved* nonmetropolitan middle-income geographies, activities that provide housing for middle- and upper-income individuals may qualify as activities that revitalize or stabilize such *underserved* areas if the activities also provide housing for low- or moderate-income individuals. For example, a loan to build a mixed-income housing development that provides housing for middle- and upper-income individuals in an *underserved* nonmetropolitan middle-income geography would receive positive consideration if it also provides housing for low- or moderate-income individuals.

§ ____.12(g)(4)(i) Activities That Revitalize or Stabilize Low- or Moderate-Income Geographies

§ ____.12(g)(4)(i)—1: *What activities are considered to "revitalize or stabilize" a low- or moderate-income geography, and how are those activities considered?*

A1. Activities that revitalize or stabilize a low- or moderate-income geography are activities that help to attract new, or retain existing, businesses or residents. Examiners will presume that an activity revitalizes or stabilizes a low- or moderate-income geography if the activity has been approved by the governing board of an Enterprise Community or Empowerment Zone (designated pursuant to 26 U.S.C. 1391) and is consistent with the board's strategic plan. They will make the same presumption if the activity has received similar official designation as consistent with a Federal, state, local, or tribal government plan for the revitalization or stabilization of the low- or moderate-income geography. For example, foreclosure prevention programs with the objective of providing affordable, sustainable, long-term loan restructurings or modifications to homeowners in low- or moderate-income geographies, consistent with safe and sound banking practices, may help to revitalize or stabilize those geographies.

To determine whether other activities revitalize or stabilize a low- or moderate-income geography, examiners will evaluate the activity's actual impact on the geography, if information about this is available. If not, examiners will determine whether the activity is consistent with the community's formal or informal plans for the revitalization and stabilization of the low- or moderate-income geography. For more information on what activities revitalize or stabilize a low- or moderate-income geography, see Q&As § ____.12(g)–2 and § ____.12(h)–5.

§ ____.12(g)(4)(ii) Activities That Revitalize or Stabilize Designated Disaster Areas

§ ____.12(g)(4)(ii)—1: *What is a "designated disaster area" and how long does it last?*

A1. A "designated disaster area" is a major disaster area designated by the Federal government. Such disaster designations include, in particular, Major Disaster Declarations administered by the Federal Emergency Management Agency (FEMA) (*http://www.fema.gov*), but excludes counties designated to receive only FEMA Public Assistance Emergency Work Category A (Debris Removal) and/or Category B (Emergency Protective Measures).

Examiners will consider institution activities related to disaster recovery that revitalize or stabilize a designated disaster area for 36 months following the date of designation. Where there is a demonstrable community need to extend the period for recognizing revitalization or stabilization activities in a particular disaster area to assist in long-term recovery efforts, this time period may be extended.

§ ____.12(g)(4)(ii)—2: *What activities are considered to "revitalize or stabilize" a designated disaster area, and how are those activities considered?*

A2. The Agencies generally will consider an activity to revitalize or stabilize a designated disaster area if it helps to attract new, or retain existing, businesses or residents and is related to disaster recovery. An activity will be presumed to revitalize or stabilize the area if the activity is consistent with a bona fide government revitalization or stabilization plan or disaster recovery plan. The Agencies generally will consider all activities relating to disaster recovery that revitalize or stabilize a designated disaster area, but will give greater weight to those activities that are most responsive to community needs, including the needs of low- or moderate-income individuals or neighborhoods. Qualifying activities may include, for example, providing financing to help retain businesses in the area that employ local residents, including low- and moderate-income individuals; providing financing to attract a major new employer that will create long-term job opportunities, including for low- and moderate-income individuals; providing financing or other assistance for essential community-wide infrastructure, community services, and rebuilding needs; and activities that provide housing, financial assistance, and services to individuals in designated disaster areas and to individuals who have been displaced from those areas, including low- and moderate-income individuals (*see, e.g.,* Q&As § ____.12(i)–3; § ____.12(t)–4; § ____.22(b)(2) & (3)–4; § ____.22(b)(2) & (3)–5; and § ____.24(d)(3)–1).

§ ____.12(g)(4)(iii) Activities That Revitalize or Stabilize Distressed or Underserved Nonmetropolitan Middle-Income Geographies

§ ____.12(g)(4)(iii)—1: *What criteria are used to identify distressed or underserved nonmetropolitan, middle-income geographies?*

A1. Eligible nonmetropolitan middle-income geographies are those designated by the Agencies as being in distress or that could have difficulty meeting essential community needs (underserved). A particular geography could be designated as both distressed and underserved. As defined in 12 CFR ____.12(k), a geography is a census tract delineated by the U.S. Bureau of the Census.

A nonmetropolitan middle-income geography will be designated as distressed if it is in a county that meets one or more of the following triggers: (1) An unemployment rate of at least 1.5 times the national average, (2) a poverty rate of 20 percent or more, or (3) a population loss of 10 percent or more between the previous and most recent decennial census or a net migration loss of five percent or more over the five-year period preceding the most recent census.

A nonmetropolitan middle-income geography will be designated as underserved if it meets criteria for population size, density, and dispersion that indicate the area's population is sufficiently small, thin, and distant from a population center that the tract is likely to have difficulty financing the fixed costs of meeting essential community needs. The Agencies will use as the basis for these designations the "urban influence codes," numbered "7," "10," "11," and "12," maintained by the Economic Research Service of the U.S. Department of Agriculture.

The Agencies publish data source information along with the list of eligible nonmetropolitan census tracts on the Federal Financial Institutions Examination Council (FFIEC) Web site (*http://www.ffiec.gov*).

§ ____.12(g)(4)(iii)—2: *How often will the Agencies update the list of designated distressed and underserved nonmetropolitan middle-income geographies?*

A2. The Agencies will review and update the list annually. The list is published on the FFIEC Web site (*http://www.ffiec.gov*).

To the extent that changes to the designated census tracts occur, the Agencies have determined to adopt a one-year "lag period." This lag period will be in effect for the 12 months immediately following the date when a census tract that was designated as distressed or underserved is removed from the designated list. Revitalization or stabilization activities undertaken during the lag period will receive consideration as community development activities if they would have been considered to have a primary purpose of community development if the census tract in which they were located were still designated as distressed or underserved.

§ ____.12(g)(4)(iii)—3: *What activities are considered to "revitalize or stabilize" a distressed nonmetropolitan middle-income geography, and how are those activities evaluated?*

A3. An activity revitalizes or stabilizes a distressed nonmetropolitan middle-income geography if it helps to attract new, or retain existing, businesses or residents. An activity will be presumed to revitalize or stabilize the area if the activity is consistent with a bona fide government revitalization or stabilization plan. The Agencies generally will consider all activities that revitalize or stabilize a distressed nonmetropolitan middle-income geography, but will give greater weight to those activities that are most responsive to community needs, including needs of low- or moderate-income individuals or neighborhoods. Qualifying activities may include, for example, providing financing to attract a major new employer that will create long-term job opportunities, including for low- and moderate-income individuals, and activities that provide financing or other assistance for essential infrastructure or facilities necessary to attract or retain businesses or residents. *See* Q&As § ____.12(g)(4)(i)–1 and § ____.12(h)–5.

§ ____.12(g)(4)(iii)—4: *What activities are considered to "revitalize or stabilize" an underserved nonmetropolitan middle-income geography, and how are those activities evaluated?*

A4. The regulation provides that activities revitalize or stabilize an underserved nonmetropolitan middle-income geography if they help to meet essential community needs, including needs of low- or moderate-income individuals. Activities, such as financing for the construction, expansion, improvement, maintenance, or operation of essential infrastructure or facilities for health services, education, public safety, public services, industrial parks, affordable housing, or communication services, will be evaluated under these criteria to determine if they qualify for revitalization or stabilization consideration. Examples of the types of projects that qualify as meeting essential community needs, including needs of low- or moderate-income individuals, would be

- a new or expanded hospital that serves the entire county, including low- and moderate-income residents;
- an industrial park for businesses whose employees include low- or moderate-income individuals;
- a new or rehabilitated sewer line that serves community residents, including low- or moderate-income residents;
- a mixed-income housing development that includes affordable housing for low- and moderate-income families;
- a renovated elementary school that serves children from the community, including children from low- and moderate-income families;
- a new or rehabilitated communications infrastructure, such as broadband internet service, that serves the community, including low- and moderate-income residents; or
- a new or rehabilitated flood control measure, such as a levee or storm drain, that serves the community, including low- and moderate-income residents.

Other activities in the area, such as financing a project to build a sewer line spur that connects services to a middle- or upper-income housing development while bypassing a low- or moderate-income development that also needs the sewer services, generally would not qualify for revitalization or stabilization consideration in geographies designated as underserved. If an underserved geography is also designated as a distressed or a disaster area, additional activities may be considered to revitalize or stabilize the geography, as explained in Q&As § ____.12(g)(4)(ii)–2 and § ____.12(g)(4)(iii)–3.

§ ____.12(h) Community Development Loan

§ ____.12(h)—1: *What are examples of community development loans?*

A1. Examples of community development loans include, but are not limited to, loans to

- borrowers for affordable housing rehabilitation and construction, including construction and permanent financing of multifamily rental property serving low- and moderate-income persons;
- not-for-profit organizations serving primarily low- and moderate-income housing or other community development needs;
- borrowers to construct or rehabilitate community facilities that are located in low- and moderate-income areas or that serve primarily low- and moderate-income individuals;
- financial intermediaries including Community Development Financial Institutions (CDFI), New Markets Tax Credit-eligible Community Development Entities, Community Development Corporations (CDC), minority- and women-owned financial institutions, community loan funds or pools, and low-income or community development credit unions that primarily lend or facilitate lending to promote community development;
- local, state, and tribal governments for community development activities;
- borrowers to finance environmental clean-up or redevelopment of an industrial site as part of an effort to revitalize the low- or moderate-income

community in which the property is located;

- businesses, in an amount greater than $1 million, when made as part of the Small Business Administration's 504 Certified Development Company program; and
- borrowers to finance renewable energy, energy-efficient, or water conservation equipment or projects that support the development, rehabilitation, improvement, or maintenance of affordable housing or community facilities, such as a health clinic that provides services for low- or moderate-income individuals. For example, the benefit to low- or moderate-income individuals may result in either a reduction in a tenant's utility cost or the cost of providing utilities to common areas in an affordable housing development. Further, a renewable energy facility may be located on-site or off-site, so long as the benefit from the energy generated is provided to an affordable housing project or a community facility that has a community development purpose.

The rehabilitation and construction of affordable housing or community facilities, referred to above, may include the abatement or remediation of, or other actions to correct, environmental hazards, such as lead-based paint, asbestos, mold, or radon that are present in the housing, facilities, or site.

§ ____.12(h)—2: *If a retail institution that is not required to report under the Home Mortgage Disclosure Act (HMDA) makes affordable home mortgage loans that would be HMDA-reportable home mortgage loans if it were a reporting institution, or if a small institution that is not required to collect and report loan data under the CRA makes small business and small farm loans and consumer loans that would be collected and/or reported if the institution were a large institution, may the institution have these loans considered as community development loans?*

A2. No. Although small institutions are not required to report or collect information on small business and small farm loans and consumer loans, and some institutions are not required to report information about their home mortgage loans under HMDA, if these institutions are retail institutions, the Agencies will consider in their CRA evaluations the institutions' originations and purchases of loans that would have been collected or reported as small business, small farm, consumer or home mortgage loans, had the institution been a collecting and reporting institution under the CRA or the HMDA. Therefore, these loans will not be considered as community development loans, unless the small institution is an intermediate small institution (*see* Q&A § ____.12(h)–3). Multifamily dwelling loans, however, may be considered as community development loans as well as home mortgage loans. *See also* Q&A § ____.42(b)(2)–2.

§ ____.12(h)—3: *May an intermediate small institution that is not subject to HMDA reporting have home mortgage loans considered as community development loans? Similarly, may an intermediate small institution have small business and small farm loans and consumer loans considered as community development loans?*

A3. Yes. In instances where intermediate small institutions are not required to report HMDA or small business or small farm loans, these loans may be considered, at the institution's option, as community development loans, provided they meet the regulatory definition of "community development." If small business or small farm loan data have been reported to the Agencies to preserve the option to be evaluated as a large institution, but the institution ultimately chooses to be evaluated under the intermediate small institution examination standards, then the institution would continue to have the option to have such loans considered as community development loans. However, if the institution opts to be evaluated under the lending, investment, and service tests applicable to large institutions, it may not choose to have home mortgage, small business, small farm, or consumer loans considered as community development loans.

Loans other than multifamily dwelling loans may not be considered under both the lending test and the community development test for intermediate small institutions. Thus, if an institution elects to have certain loans considered under the community development test, those loans may not also be considered under the lending test, and would be excluded from the lending test analysis.

Intermediate small institutions may choose individual loans within their portfolio for community development consideration. Examiners will evaluate an intermediate small institution's community development activities within the context of the responsiveness of the activity to the community development needs of the institution's assessment area(s).

§ ____.12(h)—4: *Do secured credit cards or other credit card programs targeted to low- or moderate-income individuals qualify as community development loans?*

A4. No. Credit cards issued to low- or moderate-income individuals for household, family, or other personal expenditures, whether as part of a program targeted to such individuals or otherwise, do not qualify as community development loans because they do not have as their primary purpose any of the activities included in the definition of "community development."

§ ____.12(h)—5: *The regulation indicates that community development includes "activities that revitalize or stabilize low- or moderate-income geographies." Do all loans in a low- to moderate-income geography have a stabilizing effect?*

A5. No. Some loans may provide only indirect or short-term benefits to low- or moderate-income individuals in a low- or moderate-income geography. These loans are not considered to have a community development purpose. For example, a loan for upper-income housing in a low- or moderate-income area is not considered to have a community development purpose simply because of the indirect benefit to low- or moderate-income persons from construction jobs or the increase in the local tax base that supports enhanced services to low- and moderate-income area residents. On the other hand, a loan for an anchor business in a low- or moderate-income area (or a nearby area) that employs or serves residents of the area and, thus, stabilizes the area, may be considered to have a community development purpose. For example, in a low-income area, a loan for a pharmacy that employs and serves residents of the area promotes community development.

§ ____.12(h)—6: *Must there be some immediate or direct benefit to the institution's assessment area(s) to satisfy the regulations' requirement that qualified investments and community development loans or services benefit an institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s)?*

A6. No. The regulations recognize that community development organizations and programs are efficient and effective ways for institutions to promote community development. These organizations and programs often operate on a statewide or even multistate basis. Therefore, an institution's activity is considered a community development loan or service or a qualified investment if it supports an organization or activity that covers an area that is larger than, but includes, the institution's assessment area(s). The institution's assessment area(s) need not receive an immediate or direct benefit from the institution's participation in the organization or activity, provided that the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located within the institution's assessment area(s).

In addition, a retail institution will receive consideration for certain other community development activities. These activities must benefit geographies or individuals located somewhere within a broader statewide or regional area that includes the institution's assessment area(s). Examiners will consider these activities even if they will not benefit the institution's assessment area(s), as long as the institution has been responsive to community development needs and opportunities in its assessment area(s).

§____.12(h)—7: *What is meant by the term "regional area"?*

A7. A "regional area" may be an intrastate area or a multistate area that includes the financial institution's assessment area(s). Regional areas typically have some geographic, demographic, and/or economic interdependencies and may conform to commonly accepted delineations, such as "the tri-county area" or the "mid-Atlantic states." Regions are often defined by the geographic scope and specific purpose of a community development organization or initiative.

§____.12(h)—8: *What is meant by the term "primary purpose" as that term is used to define what constitutes a community development loan, a qualified investment, or a community development service?*

A8. A loan, investment, or service has as its primary purpose community development when it is designed for the express purpose of revitalizing or stabilizing low- or moderate-income areas, designated disaster areas, or underserved or distressed nonmetropolitan middle-income areas, providing affordable housing for, or community services targeted to, low- or moderate-income persons, or promoting economic development by financing small businesses or farms that meet the requirements set forth in 12 CFR ____ .12(g). To determine whether an activity is designed for an express community development purpose, the agencies apply one of two approaches. First, if a majority of the dollars or beneficiaries of the activity are identifiable to one or more of the enumerated community development purposes, then the activity will be considered to possess the requisite primary purpose. Alternatively, where the measurable portion of any benefit bestowed or dollars applied to the community development purpose is less than a majority of the entire activity's benefits or dollar value, then the activity may still be considered to possess the requisite primary purpose, and the institution may receive CRA consideration for the entire activity, if (1) the express, bona fide intent of the activity, as stated, for example, in a prospectus, loan proposal, or community action plan, is primarily one or more of the enumerated community development purposes; (2) the activity is specifically structured (given any relevant market or legal constraints or performance context factors) to achieve the expressed community development purpose; and (3) the activity accomplishes, or is reasonably certain to accomplish, the community development purpose involved.

Generally, a loan, investment, or service will be determined to have a "primary purpose" of community development only if it meets the criteria described above. However, an activity involving the provision of affordable housing also may be deemed to have a "primary purpose" of community development in certain other limited circumstances in which these criteria have not been met. Specifically, activities related to the provision of mixed-income housing, such as in connection with a development that has a mixed-income housing component or an affordable housing set-aside required by Federal, state, or local government, also would be eligible for consideration as an activity that has a "primary purpose" of community development at the election of the institution. In such cases, an institution may receive pro rata consideration for the portion of such activities that helps to provide affordable housing to low- or moderate-income individuals. For example, if an institution makes a $10 million loan to finance a mixed-income housing development in which 10 percent of the units will be set aside as affordable housing for low- and moderate-income individuals, the institution may elect to treat $1 million of such loan as a community development loan. In other words, the pro rata dollar amount of the total activity will be based on the percentage of units set-aside for affordable housing for low- or moderate-income individuals.

The fact that an activity provides indirect or short-term benefits to low- or moderate-income persons does not make the activity community development, nor does the mere presence of such indirect or short-term benefits constitute a primary purpose of community development. Financial institutions that want examiners to consider certain activities should be prepared to demonstrate the activities' qualifications.

§____.12(i) Community Development Service

§____.12(i)—1: *In addition to meeting the definition of "community development" in the regulation, community development services must also be related to the provision of financial services. What is meant by "provision of financial services"?*

A1. Providing financial services means providing services of the type generally provided by the financial services industry. Providing financial services often involves informing community members about how to get or use credit or otherwise providing credit services or information to the community. For example, service on the board of directors of an organization that promotes credit availability or finances affordable housing is related to the provision of financial services. Providing technical assistance about financial services to community-based groups, local or tribal government agencies, or intermediaries that help to meet the credit needs of low- and moderate-income individuals or small businesses and farms is also providing financial services. By contrast, activities that do not take advantage of the employees' financial expertise, such as neighborhood cleanups, do not involve the provision of financial services.

§____.12(i)—2: *Are personal charitable activities provided by an institution's employees or directors outside the ordinary course of their employment considered community development services?*

A2. No. Services must be provided as a representative of the institution. For example, if a financial institution's director, on her own time and not as a representative of the institution, volunteers one evening a week at a local community development corporation's financial counseling program, the institution may not consider this activity a community development service.

§____.12(i)—3: *What are examples of community development services?*

A3. Examples of community development services include, but are not limited to, the following:

- Providing technical assistance on financial matters to nonprofit, tribal, or government organizations serving low- and moderate-income housing or economic revitalization and development needs;
- Providing technical assistance on financial matters to small businesses or community development organizations, including organizations and individuals

who apply for loans or grants under the Federal Home Loan Banks' (FHLB) Affordable Housing Program;

- Lending employees to provide financial services for organizations facilitating affordable housing construction and rehabilitation or development of affordable housing;
- Providing credit counseling, home-buyer and home maintenance counseling, financial planning or other financial services education to promote community development and affordable housing, including credit counseling to assist low- or moderate-income borrowers in avoiding foreclosure on their homes;
- Establishing school savings programs or developing or teaching financial education or literacy curricula for low- or moderate-income individuals; and
- Providing foreclosure prevention programs to low- or moderate-income homeowners who are facing foreclosure on their primary residence with the objective of providing affordable, sustainable, long-term loan modifications and restructurings.

Examples of technical assistance activities that are related to the provision of financial services and that might be provided to community development organizations include

- serving on the board of directors;
- serving on a loan review committee;
- developing loan application and underwriting standards;
- developing loan-processing systems;
- developing secondary market vehicles or programs;
- assisting in marketing financial services, including development of advertising and promotions, publications, workshops and conferences;
- furnishing financial services training for staff and management;
- contributing accounting/bookkeeping services;
- assisting in fund raising, including soliciting or arranging investments; and
- providing services reflecting a financial institution's employees' areas of expertise at the institution, such as human resources, information technology, and legal services.

Refer to Q&A § ____.24(a)—1 for information about how retail services are evaluated under the large institution service test.

§ ____.12(j) Consumer Loan

§ ____.12(j)—1: *Are home equity loans considered "consumer loans"?*

A1. Home equity loans made for purposes other than home purchase, home improvement, or refinancing home purchase or home improvement loans are consumer loans if they are extended to one or more individuals for household, family, or other personal expenditures.

§ ____.12(j)—2: *May a home equity line of credit be considered a "consumer loan" even if part of the line is for home improvement purposes?*

A2. If the predominant purpose of the line is home improvement, the line may only be reported under HMDA and may not be considered a consumer loan. However, the full amount of the line may be considered a "consumer loan" if its predominant purpose is for household, family, or other personal expenditures, and to a lesser extent home improvement, and the full amount of the line has not been reported under HMDA. This is the case even though there may be "double counting" because part of the line may also have been reported under HMDA.

§ ____.12(j)—3: *How should an institution collect or report information on loans the proceeds of which will be used for multiple purposes?*

A3. If an institution makes a single loan or provides a line of credit to a customer to be used for both consumer and small business purposes, consistent with the instructions for the Consolidated Reports of Condition and Income (Call Report), the institution should determine the major (predominant) component of the loan or the credit line and collect or report the entire loan or credit line in accordance with the regulation's specifications for that loan type.

§ ____.12(l) Home Mortgage Loan

§ ____.12(l)—1: *Does the term "home mortgage loan" include loans other than "home purchase loans"?*

A1. Yes. "Home mortgage loan" includes "home improvement loan," "home purchase loan," and "refinancing," as defined in the HMDA regulation, Regulation C, 12 CFR part 1003. This definition also includes multifamily (five-or-more families) dwelling loans, and loans for the purchase of manufactured homes. *See also* Q&A § ____.22(a)(2)–7.

§ ____.12(l)—2: *Some financial institutions broker home mortgage loans. They typically take the borrower's application and perform other settlement activities; however, they do not make the credit decision. The broker institutions may also initially fund these mortgage loans, then immediately assign them to another lender. Because the broker institution does not make the credit decision, under Regulation C (HMDA), they do not record the loans on their HMDA loan application registers (HMDA–LAR), even if they fund the loans. May an institution receive any consideration under CRA for its home mortgage loan brokerage activities?*

A2. Yes. A financial institution that funds home mortgage loans but immediately assigns the loans to the lender that made the credit decisions may present information about these loans to examiners for consideration under the lending test as "other loan data." Under Regulation C, the broker institution does not record the loans on its HMDA–LAR because it does not make the credit decisions, even if it funds the loans. An institution electing to have these home mortgage loans considered must maintain information about all of the home mortgage loans that it has funded in this way. Examiners will consider these other loan data using the same criteria by which home mortgage loans originated or purchased by an institution are evaluated.

Institutions that do not provide funding but merely take applications and provide settlement services for another lender that makes the credit decisions will receive consideration for this service as a retail banking service. Examiners will consider an institution's mortgage brokerage services when evaluating the range of services provided to low-, moderate-, middle- and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies. Alternatively, an institution's mortgage brokerage service may be considered a community development service if the primary purpose of the service is community development. An institution wishing to have its mortgage brokerage service considered as a community development service must provide sufficient information to substantiate that its primary purpose is community development and to establish the extent of the services provided.

§ ____.12(m) Income Level

§ ____.12(m)—1: *Where do institutions find income level data for geographies and individuals?*

A1. The median family income (MFI) levels for *geographies, i.e.,* census tracts, are calculated using income data from the U.S. Census Bureau's American Community Survey (ACS) and geographic definitions from the Office of Management and Budget (OMB), and are updated approximately every five years. Geographic income data, along with detailed information about the FFIEC's calculation of geographic MFI data, are available on the FFIEC Web site at *http://www.ffiec.gov/cra.htm.*

The income levels for *individuals* are calculated annually by the FFIEC using geographic definitions from the OMB, income data from the ACS, and the Consumer Price Index from the Congressional Budget Office. Individual MFI data for metropolitan statistical areas (MSA) and statewide nonmetropolitan areas, along with detailed information about the FFIEC's calculation of individual MFI data, are available on the FFIEC Web site at *http://www.ffiec.gov/cra.htm.*

§ ____.12(n) Limited Purpose Institution

§ ____.12(n)—1: *What constitutes a "narrow product line" in the definition of "limited purpose institution"?*

A1. An institution offers a narrow product line by limiting its lending activities to a product line other than a traditional retail product line required to be evaluated under the lending test (*i.e.,* home mortgage, small business, and small farm loans). Thus, an institution engaged only in making credit card or motor vehicle loans offers a narrow product line, while an institution limiting its lending activities to home mortgages is not offering a narrow product line.

§ ____.12(n)—2: *What factors will the Agencies consider to determine whether an institution that, if limited purpose, makes loans outside a narrow product line, or, if wholesale, engages in retail lending, will lose its limited purpose or wholesale designation because of too much other lending?*

A2. Wholesale institutions may engage in some retail lending without losing their designation if this activity is incidental *and* done on an accommodation basis. Similarly, limited purpose institutions continue to meet the narrow product line requirement if they provide other types of loans on an infrequent basis. In reviewing other lending activities by these institutions, the Agencies will consider the following factors:

- Is the retail lending provided as an incident to the institution's wholesale lending?
- Are the retail loans provided as an accommodation to the institution's wholesale customers?
- Are the other types of loans made only infrequently to the limited purpose institution's customers?
- Does only an insignificant portion of the institution's total assets and income result from the other lending?
- How significant a role does the institution play in providing that type(s) of loan(s) in the institution's assessment area(s)?
- Does the institution hold itself out as offering that type(s) of loan(s)?
- Does the lending test or the community development test present a more accurate picture of the institution's CRA performance?

§ ____.12(n)—3: *Do "niche institutions" qualify as limited purpose (or wholesale) institutions?*

A3. Generally, no. Institutions that are in the business of lending to the public, but specialize in certain types of retail loans (for example, home mortgage or small business loans) to certain types of borrowers (for example, to high-end income level customers or to corporations or partnerships of licensed professional practitioners) ("niche institutions") generally would not qualify as limited purpose (or wholesale) institutions.

§ ____.12(t) Qualified Investment

§ ____.12(t)—1: *Does the CRA regulation provide authority for institutions to make investments?*

A1. No. The CRA regulation does not provide authority for institutions to make investments that are not otherwise allowed by Federal law.

§ ____.12(t)—2: *Are mortgage-backed securities or municipal bonds "qualified investments"?*

A2. As a general rule, mortgage-backed securities and municipal bonds are not qualified investments because they do not have as their primary purpose community development, as defined in the CRA regulations. Nonetheless, mortgage-backed securities or municipal bonds designed primarily to finance community development generally are qualified investments. Municipal bonds or other securities with a primary purpose of community development need not be housing-related. For example, a bond to fund a community facility or park or to provide sewage services as part of a plan to redevelop a low-income neighborhood is a qualified investment. Certain municipal bonds in underserved nonmetropolitan middle-income geographies may also be qualified investments. *See* Q&A § ____.12(g)(4)(iii)–4. Housing-related bonds or securities must primarily address affordable housing (including multifamily rental housing) needs of low- or moderate-income individuals in order to qualify. *See also* Q&A § ____.23(b)–2.

§ ____.12(t)—3: *Are FHLB stocks or unpaid dividends and membership reserves with the Federal Reserve Banks "qualified investments"?*

A3. No. FHLB stocks or unpaid dividends, and membership reserves with the Federal Reserve Banks do not have a sufficient connection to community development to be qualified investments. However, FHLB member institutions may receive CRA consideration as a community development service for technical assistance they provide on behalf of applicants and recipients of funding from the FHLB's Affordable Housing Program. *See* Q&A § ____.12(i)–3.

§ ____.12(t)—4: *What are examples of qualified investments?*

A4. Examples of qualified investments include, but are not limited to, investments, grants, deposits, or shares in or to:

- Financial intermediaries (including CDFIs, New Markets Tax Credit-eligible Community Development Entities, CDCs, minority- and women-owned financial institutions, community loan funds, and low-income or community development credit unions) that primarily lend or facilitate lending in low- and moderate-income areas or to low- and moderate-income individuals in order to promote community development, such as a CDFI that promotes economic development on an Indian reservation;
- Organizations engaged in affordable housing rehabilitation and construction, including multifamily rental housing;
- Organizations, including, for example, SBICs, specialized SBICs, and Rural Business Investment Companies (RBIC) that promote economic development by financing small businesses;
- Community development venture capital companies that promote economic development by financing small businesses;
- Facilities that promote community development by providing community services for low- and moderate-income individuals, such as youth programs, homeless centers, soup kitchens, health care facilities, battered women's centers, and alcohol and drug recovery centers;
- Projects eligible for low-income housing tax credits;
- State and municipal obligations, such as revenue bonds, that specifically support affordable housing or other community development;
- Not-for-profit organizations serving low- and moderate-income housing or other community development needs, such as counseling for credit, home-ownership, home maintenance, and other financial literacy programs; and
- Organizations supporting activities essential to the capacity of low- and moderate-income individuals or geographies to utilize credit or to sustain economic development, such as, for example, day care operations and job training programs or workforce development programs that enable low-

or moderate-income individuals to work.

See also Q&As § ____.12(g)(4)(ii)—2; § ____.12(g)(4)(iii)–3; § ____.12(g)(4)(iii)–4.

§ ____.12(t)—5: *Will an institution receive consideration for charitable contributions as "qualified investments"?*

A5. Yes, provided they have as their primary purpose community development as defined in the regulations. A charitable contribution, whether in cash or an in-kind contribution of property, is included in the term "grant." A qualified investment is not disqualified because an institution receives favorable treatment for it (for example, as a tax deduction or credit) under the Internal Revenue Code.

§ ____.12(t)—6: *An institution makes or participates in a community development loan. The institution provided the loan at below-market interest rates or "bought down" the interest rate to the borrower. Is the lost income resulting from the lower interest rate or buy-down a qualified investment?*

A6. No. The Agencies will, however, consider the responsiveness, innovativeness, and complexity of the community development loan within the bounds of safe and sound banking practices.

§ ____.12(t)—7: *Will the Agencies consider as a qualified investment the wages or other compensation of an employee or director who provides assistance to a community development organization on behalf of the institution?*

A7. No. However, the Agencies will consider donated labor of employees or directors of a financial institution as a community development service if the activity meets the regulatory definition of "community development service."

§ ____.12(t)—8: *When evaluating a qualified investment, what consideration will be given for prior-period investments?*

A8. When evaluating an institution's qualified investment record, examiners will consider investments that were made prior to the current examination, but that are still outstanding. Qualitative factors will affect the weight given to both current period and outstanding prior-period qualified investments. For example, a prior-period outstanding investment with a multi-year impact that addresses assessment area community development needs may receive more consideration than a current period investment of a comparable amount that is less responsive to area community development needs.

§ ____.12(t)—9: *How do examiners evaluate loans or investments to organizations that, in turn, invest in instruments that do not have a community development purpose, and use only the income, or a portion of the income, from those investments to support their community development purpose?*

A9. Examiners will give quantitative consideration for the dollar amount of funds that benefit an organization or activity that has a primary purpose of community development. If an institution invests in (or lends to) an organization that, in turn, invests those funds in instruments that do not have as their primary purpose community development, such as Treasury securities, and uses only the income, or a portion of the income, from those investments to support the organization's community development purposes, the Agencies will consider only the amount of the investment income used to benefit the organization or activity that has a community development purpose for CRA purposes. Examiners will, however, provide consideration for such instruments when the organization invests solely as a means of securing capital for leveraging purposes, securing additional financing, or in order to generate a return with minimal risk until funds can be deployed toward the originally intended community development activity. The organization must express a bona fide intent to deploy the funds from investments and loans in a manner that primarily serves a community development purpose in order for the institution to receive consideration under the applicable test.

§ ____.12(u) Small Institution

§ ____.12(u)—1: *How are Federal and state branch assets of a foreign bank calculated for purposes of the CRA?*

A1. A Federal or state branch of a foreign bank is considered a small institution if the Federal or state branch has assets less than the asset threshold delineated in 12 CFR ____.12(u)(1) for small institutions.

§ ____.12(u)(2) Small Institution Adjustment

§ ____.12(u)(2)—1: *How often will the asset size thresholds for small institutions and intermediate small institutions be changed, and how will these adjustments be communicated?*

A1. The asset size thresholds for "small institutions" and "intermediate small institutions" will be adjusted annually based on changes to the Consumer Price Index. More specifically, the dollar thresholds will be adjusted annually based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted for each 12-month period ending in November, with rounding to the nearest million. Any changes in the asset size thresholds will be published in the **Federal Register**. Historical and current asset-size threshold information may be found on the FFIEC's Web site at *http://www.ffiec.gov/cra.*

§ ____.12(v) Small Business Loan

§ ____.12(v)—1: *Are loans to nonprofit organizations considered small business loans or are they considered community development loans?*

A1. To be considered a small business loan, a loan must meet the definition of "loans to small businesses" in the instructions in the Call Report. In general, a loan to a nonprofit organization, for business or farm purposes, where the loan is secured by nonfarm nonresidential property and the original amount of the loan is $1 million or less, if a business loan, or $500,000 or less, if a farm loan, would be reported in the Call Report as a small business or small farm loan. If a loan to a nonprofit organization is reportable as a small business or small farm loan, it cannot also be considered as a community development loan, except by a wholesale or limited purpose institution. Loans to nonprofit organizations that are not small business or small farm loans for Call Report purposes may be considered as community development loans if they meet the regulatory definition of "community development."

§ ____.12(v)—2: *Are loans secured by commercial real estate considered small business loans?*

A2. Yes, depending on their principal amount. Small business loans include loans secured by "nonfarm nonresidential properties," as defined in the Call Report, in amounts of $1 million or less.

§ ____.12(v)—3: *Are loans secured by nonfarm residential real estate to finance small businesses "small business loans"?*

A3. Typically not. Loans secured by nonfarm residential real estate that are used to finance small businesses are not included as "small business" loans for Call Report purposes unless the security interest in the nonfarm residential real estate is taken only as an abundance of caution. (*See* Call Report Glossary definition of "Loan Secured by Real Estate.") The Agencies recognize that many small businesses are financed by loans that would not have been made or would have been made on less favorable terms had they not been secured by residential real estate. If these loans promote community development, as defined in the regulation, they may be considered as community development loans. Otherwise, at an institution's option, the institution may collect and maintain data separately concerning these loans and request that the data be considered in its CRA evaluation as "Other Secured Lines/Loans for Purposes of Small Business." *See also* Q&A § ____.22(a)(2)–7.

§ ____.12(v)—4: *Are credit cards issued to small businesses considered "small business loans"?*

A4. Credit cards issued to a small business or to individuals to be used, with the institution's knowledge, as business accounts are small business loans if they meet the definitional requirements in the Call Report instructions.

§ ____.12(x) Wholesale Institution

§ ____.12(x)—1: *What factors will the Agencies consider in determining whether an institution is in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers?*

A1. The Agencies will consider whether:

- The institution holds itself out to the retail public as providing such loans.
- the institution's revenues from extending such loans are significant when compared to its overall operations, including off-balance sheet activities.

A wholesale institution may make some retail loans without losing its wholesale designation as described above in Q&A § ____.12(n)–2.

§ ____.21—Performance Tests, Standards, and Ratings, in General

§ ____.21(a) Performance Tests and Standards

§ ____.21(a)—1: *How will examiners apply the performance criteria?*

A1. Examiners will apply the performance criteria reasonably and fairly, in accord with the regulations, the examination procedures, and this guidance. In doing so, examiners will disregard efforts by an institution to manipulate business operations or present information in an artificial light that does not accurately reflect an institution's overall record of lending performance.

§ ____.21(a)—2: *Are all community development activities weighted equally by examiners?*

A2. No. Examiners will consider the responsiveness to credit and community development needs, as well as the innovativeness and complexity, if applicable, of an institution's community development lending, qualified investments, and community development services. These criteria include consideration of the degree to which they serve as a catalyst for other community development activities. The criteria are designed to add a qualitative element to the evaluation of an institution's performance. ("Innovativeness" and "complexity" are not factors in the community development test applicable to intermediate small institutions.)

§ ____.21(a)—3: *"Responsiveness" to credit and community development needs is either a criterion or otherwise a consideration in all of the performance tests. How do examiners evaluate whether a financial institution has been "responsive" to credit and community development needs?*

A3. There are three important factors that examiners consider when evaluating responsiveness: quantity, quality, and performance context. Examiners evaluate the volume and type of an institution's activities, *i.e.*, retail and community development loans and services and qualified investments, as a first step in evaluating the institution's responsiveness to credit and community development needs. In addition, an assessment of "responsiveness" encompasses the qualitative aspects of performance, including the effectiveness of the activities. For example, some community development activities require specialized expertise or effort on the part of the institution or provide a benefit to the community that would not otherwise be made available. In some cases, a smaller loan may have more benefit to a community than a larger loan. In other words, when evaluated qualitatively, some activities are more responsive than others. Activities are more responsive if they are successful in meeting identified credit and community development needs. For example, investing in a community development organization that specializes in originating home mortgage loans to low- or moderate-income individuals would be considered more responsive than an investment of the same amount in a single-family mortgage-backed security in which the majority of the loans are to low- or moderate-income borrowers. Although both of these activities may receive consideration as a qualified investment, the former example would be considered to be more responsive than the latter.

Examiners evaluate the responsiveness of an institution's activities to credit and community development needs in light of the institution's performance context. That is, examiners consider the institution's capacity, its business strategy, the needs of the community, and the opportunities for lending, investments, and services in the community. To inform their assessment, examiners may consider information about credit and community development needs and opportunities from many sources, including:

- demographic and other information compiled by local, state, and Federal government entities;
- public comments received by the Agency, for example, in response to its publication of its planned examination schedule;
- information from community leaders or organizations;
- studies and reports from academic institutions and other research bodies;
- consumer complaint information; and
- any relevant information provided to examiners by the financial institution that is maintained by the institution in its ordinary course of business.

Responsiveness to community development needs and opportunities in an institution's assessment area(s) is also a key consideration when an institution plans to engage in community development activities that benefit areas outside of its assessment area(s). Q&A § ____.12(h)–6 states that an institution will receive consideration for activities that benefit geographies or individuals located somewhere within a broader statewide or regional area that includes the institution's assessment area(s) even if they will not benefit the institution's assessment area(s), as long as the institution has been responsive to community development needs and opportunities in its assessment area(s). When considering whether an institution has been responsive to community development needs and opportunities in its assessment area(s), examiners will consider all of the institution's community development activities in its assessment area(s). Examiners will also consider as responsive to assessment area needs community development activities that support an organization or activity that covers an area that is larger than, but includes, the institution's assessment area(s). This is true if the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located within the institution's assessment area(s), even though the institution's assessment area(s) did not receive an immediate or direct benefit from the institution's participation in the organization or activity. For example, suppose an institution were to invest in a statewide community development fund that was organized with the purpose of providing community development loans throughout the state in which the institution is located. Examiners would consider this investment when evaluating the institution's responsiveness to community development needs and opportunities in its assessment area(s) even if the fund had not provided a loan within the institution's assessment area(s).

§ ____.21(a)—4: *What is meant by "innovativeness"?*

A4. "Innovativeness" is one of several qualitative considerations under the lending, investment, and service tests. The community development test for wholesale and limited purpose institutions similarly considers "innovative" loans, investments, and services in the evaluation of performance. Under the CRA regulations, all innovative practices or activities will be considered when an institution implements meaningful improvements to products, services, or delivery systems that respond more effectively to customer and community needs, particularly those segments enumerated in the definition of community development.

Institutions should not innovate simply to meet this criterion of the applicable test, particularly if, for example, existing products, services, or delivery systems effectively address the needs of all segments of the community. *See* Q&A § ____.28–1. Innovative activities are especially meaningful when they emphasize serving, for example, low- or moderate-income consumers or distressed or underserved nonmetropolitan middle-income geographies in new or more effective ways. Innovativeness may also include products, services, or delivery systems already present in the assessment area by institutions that are not leaders in innovation—due, for example, to the lack of available financial resources or technological expertise—when they subsequently introduce those products, services, or delivery systems to their low- or moderate-income customers or segments of consumers or markets not previously served. Practices that cease to be innovative may still receive qualitative consideration for being flexible, complex, or responsive.

§ ____.21(b) Performance Context

§ ____.21(b)—1: *What is the performance context?*

A1. The performance context is a broad range of economic, demographic, and institution- and community-specific information that an examiner reviews to understand the context in which an institution's record of performance should be evaluated. The Agencies will provide examiners with some of this information. The performance context is not a formal assessment of community credit needs.

§ ____.21(b)(2) Information Maintained by the Institution or Obtained From Community Contacts

§ ____.21(b)(2)—1: *Will examiners consider performance context information provided by institutions?*

A1. Yes. An institution may provide examiners with any information it deems relevant, including information on the lending, investment, and service opportunities in its assessment area(s). This information may include data on the business opportunities addressed by lenders not subject to the CRA. Institutions are not required, however, to prepare a formal needs assessment. If an institution provides information to examiners, the Agencies will not expect information other than what the institution normally would develop to prepare a business plan or to identify potential markets and customers, including low- and moderate-income persons and geographies in its assessment area(s). The Agencies will not evaluate an institution's efforts to ascertain community credit needs or rate an institution on the quality of any information it provides.

§ ____.21(b)(2)—2: *Will examiners conduct community contact interviews as part of the examination process?*

A2. Yes. Examiners will consider information obtained from interviews with local community, civic, and government leaders. These interviews provide examiners with knowledge regarding the local community, its economic base, and community development initiatives. To ensure that information from local leaders is considered—particularly in areas where the number of potential contacts may be limited—examiners may use information obtained through an interview with a single community contact for examinations of more than one institution in a given market. In addition, the Agencies may consider information obtained from interviews conducted by other Agency staff and by the other Agencies. In order to augment contacts previously used by the Agencies and foster a wider array of contacts, the Agencies may share community contact information.

§ ____.21(b)(4) Institutional Capacity and Constraints

§ ____.21(b)(4)—1: *Will examiners consider factors outside of an institution's control that prevent it from engaging in certain activities?*

A1. Yes. Examiners will take into account statutory and supervisory limitations on an institution's ability to engage in any lending, investment, and service activities. For example, a savings association that has made few or no qualified investments due to its limited investment authority may still receive a low satisfactory rating under the investment test if it has a strong lending record.

§ ____.21(b)(5) Institution's Past Performance and the Performance of Similarly Situated Lenders

§ ____.21(b)(5)—1: *Can an institution's assigned rating be adversely affected by poor past performance?*

A1. Yes. The Agencies will consider an institution's past performance in its overall evaluation. For example, an institution that received a rating of "needs to improve" in the past may receive a rating of "substantial noncompliance" if its performance has not improved.

§ ____.21(b)(5)—2: *How will examiners consider the performance of similarly situated lenders?*

A2. The performance context section of the regulation permits the performance of similarly situated lenders to be considered, for example, as one of a number of considerations in evaluating the geographic distribution of an institution's loans to low-, moderate-, middle-, and upper-income geographies. This analysis, as well as other analyses, may be used, for example, where groups of contiguous geographies within an institution's assessment area(s) exhibit abnormally low penetration. In this regard, the performance of similarly situated lenders may be analyzed if such an analysis would provide accurate insight into the institution's lack of performance in those areas. The regulation does not require the use of a specific type of analysis under these circumstances. Moreover, no ratio developed from any type of analysis is linked to any lending test rating.

§ ____.21(f) Activities in Cooperation With Minority- or Women-Owned Financial Institutions and Low-Income Credit Unions

§ ____.21(f)—1: *The CRA provides that, in assessing the CRA performance of nonminority- and non-women-owned* *(majority-owned) financial institutions, examiners may consider as a factor capital investments, loan participations, and other ventures undertaken by the institutions in cooperation with minority- or women-owned financial institutions and low-income credit unions (MWLI), provided that these activities help meet the credit needs of local communities in which the MWLIs are chartered. Must such activities also benefit the majority-owned financial institution's assessment area(s)?*

A1. No. Although the regulations generally provide that an institution's CRA activities will be evaluated for the extent to which they benefit the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s), the Agencies apply a broader geographic criterion when evaluating capital investments, loan participations, and other ventures undertaken by that institution in cooperation with MWLIs, as provided by the CRA. Thus, such activities will be favorably considered in the CRA performance evaluation of the institution (as loans, investments, or services, as appropriate), even if the MWLIs are not located in, or such activities do not benefit, the assessment area(s) of the majority-owned institution or the broader statewide or regional area that includes its assessment area(s). The activities must, however, help meet the credit needs of the local communities in which the MWLIs are chartered. The impact of a majority-owned institution's activities in cooperation with MWLIs on the majority-owned institution's CRA rating will be determined in conjunction with its overall performance in its assessment area(s).

Examples of activities undertaken by a majority-owned financial institution in cooperation with MWLIs that would receive CRA consideration may include

- making a deposit or capital investment;
- purchasing a participation in a loan;
- loaning an officer or providing other technical expertise to assist an MWLI in improving its lending policies and practices;
- providing financial support to enable an MWLI to partner with schools or universities to offer financial literacy education to members of its local community; or
- providing free or discounted data processing systems, or office facilities to aid an MWLI in serving its customers.

§ ____.22—Lending Test

§ ____.22(a) Scope of Test

§ ____.22(a)—1: *Are there any types of lending activities that help meet the credit needs of an institution's assessment area(s) and that may warrant favorable consideration as activities that are responsive to the needs of the institution's assessment area(s)?*

A1. Credit needs vary from community to community. However, there are some lending activities that are likely to be responsive in helping to meet the credit needs of many communities. These activities include

- providing loan programs that include a financial education component about how to avoid lending activities that may be abusive or otherwise unsuitable;
- establishing loan programs that provide small, unsecured consumer loans in a safe and sound manner (*i.e.*, based on the borrower's ability to repay) and with reasonable terms;
- offering lending programs, which feature reporting to consumer reporting agencies, that transition borrowers from loans with higher interest rates and fees (based on credit risk) to lower-cost loans, consistent with safe and sound lending practices. Reporting to consumer reporting agencies allows borrowers accessing these programs the opportunity to improve their credit histories and thereby improve their access to competitive credit products; and
- establishing loan programs with the objective of providing affordable, sustainable, long-term relief, for example, through loan refinancings, restructures, or modifications, to homeowners who are facing foreclosure on their primary residences.

Examiners may consider favorably such lending activities, which have features augmenting the success and effectiveness of the small, intermediate small, or large institution's lending programs.

§ ____.22(a)(1) Types of Loans Considered

§ ____.22(a)(1)—1: *If a large retail institution is not required to collect and report home mortgage data under the HMDA, will the Agencies still evaluate the institution's home mortgage lending performance?*

A1. Yes. The Agencies will sample the institution's home mortgage loan files in order to assess its performance under the lending test criteria.

§ ____.22(a)(1)—2: *When will examiners consider consumer loans as part of an institution's CRA evaluation?*

A2. Consumer loans will be evaluated if the institution so elects and has collected and maintained the data; an institution that elects not to have its consumer loans evaluated will not be viewed less favorably by examiners than one that does. However, if consumer loans constitute a substantial majority of the institution's business, the Agencies will evaluate them even if the institution does not so elect. The Agencies interpret "substantial majority" to be so significant a portion of the institution's lending activity by number and dollar volume of loans that the lending test evaluation would not meaningfully reflect its lending performance if consumer loans were excluded.

§ ____.22(a)(2) Loan Originations and Purchases/Other Loan Data

§ ____.22(a)(2)—1: *How are lending commitments (such as letters of credit) evaluated under the regulation?*

A1. The Agencies consider lending commitments (such as letters of credit) only at the option of the institution, regardless of examination type. Commitments must be legally binding between an institution and a borrower in order to be considered. Information about lending commitments will be used by examiners to enhance their understanding of an institution's performance, but will be evaluated separately from the loans.

§ ____.22(a)(2)—2: *Will examiners review application data as part of the lending test?*

A2. Application activity is not a performance criterion of the lending test. However, examiners may consider this information in the performance context analysis because this information may give examiners insight on, for example, the demand for loans.

§ ____.22(a)(2)—3: *May a financial institution receive consideration under CRA for home mortgage loan modification, extension, and consolidation agreements (MECA), in which it obtains home mortgage loans from other institutions without actually purchasing or refinancing the home mortgage loans, as those terms have been interpreted under CRA and HMDA, as implemented by 12 CFR part 1003?*

A3. Yes. In some states, MECAs, which are not considered loan refinancings because the existing loan obligations are not satisfied and replaced, are common. Although these transactions are not considered to be purchases or refinancings, as those terms have been interpreted under CRA, they do achieve the same results. A small, intermediate small, or large institution may present information about its MECA activities with respect to home mortgages to examiners for consideration under the lending test as "other loan data."

§____.22(a)(2)—4: *In addition to MECAs, what are other examples of "other loan data"?*

A4. Other loan data include, for example,

- loans funded for sale to the secondary markets that an institution has not reported under HMDA;
- unfunded loan commitments and letters of credit;
- commercial and consumer leases;
- loans secured by nonfarm residential real estate, not taken as an abundance of caution, that are used to finance small businesses or small farms and that are not reported as small business/small farm loans or reported under HMDA; and
- an increase to a small business or small farm line of credit if the increase would cause the total line of credit to exceed $1 million, in the case of a small business line; or $500,000, in the case of a small farm line.

§____.22(a)(2)—5: *Do institutions receive consideration for originating or purchasing loans that are fully guaranteed?*

A5. Yes. For all examination types, examiners evaluate an institution's record of helping to meet the credit needs of its assessment area(s) through the origination or purchase of specified types of loans. Examiners do not take into account whether or not such loans are guaranteed.

§____.22(a)(2)—6: *Do institutions receive consideration for purchasing loan participations?*

A6. Yes. Examiners will consider the amount of loan participations purchased when evaluating an institution's record of helping to meet the credit needs of its assessment area(s) through the origination or purchase of specified types of loans, regardless of examination type. As with other loan purchases, examiners will evaluate whether loan participations purchased by an institution, which have been sold and purchased a number of times, artificially inflate CRA performance. *See, e.g.,* Q&A §____.21(a)–1.

§____.22(a)(2)—7: *How are refinancings of small business loans, which are secured by a one-to-four family residence and that have been reported under HMDA as a refinancing, evaluated under CRA?*

A7. A loan of $1 million or less with a business purpose that is secured by a one-to-four family residence is considered a small business loan for CRA purposes only if the security interest in the residential property was taken as an abundance of caution and where the terms have not been made more favorable than they would have been in the absence of the lien. (See Call Report Glossary definition of "Loan Secured by Real Estate.") If this same loan is refinanced and the new loan is also secured by a one-to-four family residence, but only through an abundance of caution, this loan is reported not only as a refinancing under HMDA, but also as a small business loan under CRA. (Note that small farm loans are similarly treated.)

It is not anticipated that "double-reported" loans will be so numerous as to affect the typical institution's CRA rating. In the event that an institution reports a significant number or amount of loans as both home mortgage and small business loans, examiners will consider that overlap in evaluating the institution's performance and generally will consider the "double-reported" loans as small business loans for CRA consideration.

The origination of a small business or small farm loan that is secured by a one-to-four family residence is not reportable under HMDA, unless the purpose of the loan is home purchase or home improvement. Nor is the loan reported as a small business or small farm loan if the security interest is not taken merely as an abundance of caution. Any such loan may be provided to examiners as "other loan data" ("Other Secured Lines/Loans for Purposes of Small Business") for consideration during a CRA evaluation. *See* Q&A §____.12(v)—3. The refinancings of such loans *would be* reported under HMDA.

§____.22(b) Performance Criteria

§____.22(b)(1) Lending Activity

§____.22(b)(1)—1: *How will the Agencies apply the lending activity criterion to discourage an institution from originating loans that are viewed favorably under CRA in the institution itself and referring other loans, which are not viewed as favorably, for origination by an affiliate?*

A1. Examiners will review closely institutions with (1) a small number and amount of home mortgage loans with an unusually good distribution among low- and moderate-income areas and low- and moderate-income borrowers and (2) a policy of referring most, but not all, of their home mortgage loans to affiliated institutions. If an institution is making loans mostly to low- and moderate-income individuals and areas and referring the rest of the loan applicants to an affiliate for the purpose of receiving a favorable CRA rating, examiners may conclude that the institution's lending activity is not satisfactory because it has inappropriately attempted to influence the rating. In evaluating an institution's lending, examiners will consider legitimate business reasons for the allocation of the lending activity.

§____.22(b)(2) & (3) Geographic Distribution and Borrower Characteristics

§____.22(b)(2) & (3)—1: *How do the geographic distribution of loans and the distribution of lending by borrower characteristics interact in the lending test applicable to either large or small institutions?*

A1. Examiners generally will consider both the distribution of an institution's loans among geographies of different income levels, and among borrowers of different income levels and businesses and farms of different sizes. The importance of the borrower distribution criterion, particularly in relation to the geographic distribution criterion, will depend on the performance context. For example, distribution among borrowers with different income levels may be more important in areas without identifiable geographies of different income categories. On the other hand, geographic distribution may be more important in areas with the full range of geographies of different income categories.

§____.22(b)(2) & (3)—2: *Must an institution lend to all portions of its assessment area?*

A2. The term "assessment area" describes the geographic area within which the agencies assess how well an institution, regardless of examination type, has met the specific performance tests and standards in the rule. The Agencies do not expect that simply because a census tract is within an institution's assessment area(s), the institution must lend to that census tract. Rather the Agencies will be concerned with conspicuous gaps in loan distribution that are not explained by the performance context. Similarly, if an institution delineated the entire county in which it is located as its assessment area, but could have delineated its assessment area as only a portion of the county, it will not be penalized for lending only in that portion of the county, so long as that portion does not reflect illegal discrimination or arbitrarily exclude low- or moderate-income geographies. The capacity and constraints of an institution, its business decisions about how it can best help to meet the needs of its assessment area(s), including those of low- and moderate-income neighborhoods, and other aspects of the performance context, are all relevant to explain why the institution is serving or not serving portions of its assessment area(s).

§ ____.22(b)(2) & (3)—3: *Will examiners take into account loans made by affiliates when evaluating the proportion of an institution's lending in its assessment area(s)?*

A3. Examiners will not take into account loans made by affiliates when determining the proportion of an institution's lending in its assessment area(s), even if the institution elects to have its affiliate lending considered in the remainder of the lending test evaluation. However, examiners may consider an institution's business strategy of conducting lending through an affiliate in order to determine whether a low proportion of lending in the assessment area(s) should adversely affect the institution's lending test rating.

§ ____.22(b)(2) & (3)—4: *When will examiners consider loans (other than community development loans) made outside an institution's assessment area(s)?*

A4. Consideration will be given for loans to low- and moderate-income persons and small business and farm loans outside of an institution's assessment area(s), provided the institution has adequately addressed the needs of borrowers within its assessment area(s). The Agencies will apply this consideration not only to loans made by large retail institutions being evaluated under the lending test, but also to loans made by small and intermediate small institutions being evaluated under their respective performance standards. Loans to low- and moderate-income persons and small businesses and farms outside of an institution's assessment area(s), however, will not compensate for poor lending performance within the institution's assessment area(s).

§ ____.22(b)(2) & (3)—5: *Under the lending test applicable to small, intermediate small, or large institutions, how will examiners evaluate home mortgage loans to middle- or upper-income individuals in a low- or moderate-income geography?*

A5. Examiners will consider these home mortgage loans under the performance criteria of the lending test, *i.e.*, by number and amount of home mortgage loans, whether they are inside or outside the financial institution's assessment area(s), their geographic distribution, and the income levels of the borrowers. Examiners will use information regarding the financial institution's performance context to determine how to evaluate the loans under these performance criteria. Depending on the performance context, examiners could view home mortgage loans to middle-income individuals in a low-income geography very differently. For example, if the loans are for homes or multifamily housing located in an area for which the local, state, tribal, or Federal government or a community-based development organization has developed a revitalization or stabilization plan (such as a Federal enterprise community or empowerment zone) that includes attracting mixed-income residents to establish a stabilized, economically diverse neighborhood, examiners may give more consideration to such loans, which may be viewed as serving the low- or moderate-income community's needs as well as serving those of the middle- or upper-income borrowers. If, on the other hand, no such plan exists and there is no other evidence of governmental support for a revitalization or stabilization project in the area and the loans to middle- or upper-income borrowers significantly disadvantage or primarily have the effect of displacing low- or moderate-income residents, examiners may view these loans simply as home mortgage loans to middle- or upper-income borrowers who happen to reside in a low- or moderate-income geography and weigh them accordingly in their evaluation of the institution.

§ ____.22(b)(4) Community Development Lending

§ ____.22(b)(4)—1: *When evaluating an institution's record of community development lending under the lending test applicable to large institutions, may an examiner distinguish among community development loans on the basis of the actual amount of the loan that advances the community development purpose?*

A1. Yes. When evaluating the institution's record of community development lending under 12 CFR ____.22(b)(4), it is appropriate to give greater weight to the amount of the loan that is targeted to the intended community development purpose. For example, consider two $10 million projects (with a total of 100 units each) that have as their express primary purpose affordable housing and are located in the same community. One of these projects sets aside 40 percent of its units for low-income residents and the other project allocates 65 percent of its units for low-income residents. An institution would report both loans as $10 million community development loans under the 12 CFR ____.42(b)(2) aggregate reporting obligation. However, transaction complexity, innovation and all other relevant considerations being equal, an examiner should also take into account that the 65 percent project provides more affordable housing for more people per dollar expended.

Under 12 CFR ____.22(b)(4), the extent of CRA consideration an institution receives for its community development loans should bear a direct relation to the benefits received by the community and the innovation or complexity of the loans required to accomplish the activity, not simply to the dollar amount expended on a particular transaction. By applying all lending test performance criteria, a community development loan of a lower dollar amount could meet the credit needs of the institution's community to a greater extent than a community development loan with a higher dollar amount, but with less innovation, complexity, or impact on the community.

§ ____.22(b)(4)—2: *How do examiners consider community development loans in the evaluation of an institution's record of lending under the lending test applicable to large institutions?*

A2. An institution's record of making community development loans may have a positive, neutral, or negative impact on the lending test rating. Community development lending is one of five performance criteria in the lending test criteria and, as such, it is considered at every examination. As with all lending test criteria, examiners evaluate an institution's record of making community development loans in the context of an institution's business model, the needs of its community, and the availability of community development opportunities in its assessment area(s) or the broader statewide or regional area(s) that includes the assessment area(s). For example, in some cases community development lending could have either a neutral or negative impact when the volume and number of community development loans are not adequate, depending on the performance context, while in other cases, it would have a positive impact when the institution is a leader in community development lending. Additionally, strong performance in retail lending may compensate for weak performance in community development lending, and conversely, strong community development lending may compensate for weak retail lending performance.

§ ____.22(b)(5) Innovative or Flexible Lending Practices

§ ____.22(b)(5)—1: *What do examiners consider in evaluating the innovativeness or flexibility of an institution's lending under the lending test applicable to large institutions?*

A1. In evaluating the innovativeness or flexibility of an institution's lending practices (and the complexity and innovativeness of its community development lending), examiners will not be limited to reviewing the overall variety and specific terms and conditions of the credit product themselves. Examiners also consider whether, and the extent to which, innovative or flexible terms or products augment the success and effectiveness of the institution's community development loan programs or, more generally, of its loan programs that address the credit needs of low- or moderate-income geographies or individuals. Historically, many institutions have used innovative and flexible lending practices to customize loans to their customers' specific needs in a safe and sound manner. However, an innovative or flexible lending practice is not required in order to obtain a specific CRA rating. *See* Q&A § ____.28—1. Examples of lending practices that are considered innovative or flexible include:

- In connection with a community development loan program, an institution may establish a technical assistance program under which the institution, directly or through third parties, provides affordable housing developers and other loan recipients with financial consulting services. Such a technical assistance program may, by itself, constitute a community development service eligible for consideration under the service test of the CRA regulations. In addition, the technical assistance may be considered as an innovative or flexible practice that augments the success and effectiveness of the related community development loan program.
- In connection with a small business lending program in a low- or moderate-income area and consistent with safe and sound lending practices, an institution may implement a program under which, in addition to providing financing, the institution also contracts with the small business borrowers. Such a contracting arrangement would not, itself, qualify for CRA consideration. However, it may be considered as an innovative or flexible practice that augments the loan program's success and effectiveness, and improves the program's ability to serve community development needs by helping to promote economic development through support of small business activities and revitalization or stabilization of low- or moderate-income geographies.
- In connection with a small dollar loan program with reasonable terms and offered in a safe and sound manner, which includes evaluating an individual's ability to repay, an institution may establish outreach initiatives or financial counseling targeted to low- or moderate-income individuals or communities. The institution's efforts to encourage the availability, awareness, and use of the small dollar loan program to meet the credit needs of low- and moderate-income individuals, in lieu of higher-cost credit, should augment the success and effectiveness of the lending program. Such loans may be considered responsive under Q&A § ____.22(a)—1, and the use of such outreach initiatives in conjunction with financial literacy education or linked savings programs also may be considered as an innovative or flexible practice to the extent that they augment the success and effectiveness of the related loan program. Such initiatives may receive consideration under other performance criteria as well. For example, an initiative to partner with a nonprofit organization to provide financial counseling that encourages responsible use of credit may, by itself, constitute a community development service eligible for consideration under the service test.
- In connection with a mortgage or consumer lending program targeted to low- or moderate-income geographies or individuals, consistent with safe and sound lending practices, an institution may establish underwriting standards that utilize alternative credit histories, such as utility or rent payments, in an effort to evaluate low- or moderate-income individuals who lack sufficient conventional credit histories and who would be denied credit under the institution's traditional underwriting standards. The use of alternative credit histories in this manner to demonstrate that consumers have a timely and consistent record of paying their obligations may be considered as an innovative or flexible practice that augments the success and effectiveness of the lending program.

§ ____.22(c) Affiliate Lending

§ ____.22(c)(1) In General

§ ____.22(c)(1)—1: If an institution, regardless of examination type, elects to have loans by its affiliate(s) considered, may it elect to have only certain categories of loans considered?

A1. Yes. An institution may elect to have only a particular category of its affiliate's lending considered. The basic categories of loans are home mortgage loans, small business loans, small farm loans, community development loans, and the five categories of consumer loans (motor vehicle loans, credit card loans, home equity loans, other secured loans, and other unsecured loans).

§ ____.22(c)(2) Constraints on Affiliate Lending

§ ____.22(c)(2)(i) No Affiliate May Claim a Loan Origination or Loan Purchase if Another Institution Claims the Same Loan Origination or Purchase

§ ____.22(c)(2)(i)—1: Regardless of examination type, how is this constraint on affiliate lending applied?

A1. This constraint prohibits one affiliate from claiming a loan origination or purchase claimed by another affiliate. However, an institution can count as a purchase a loan originated by an affiliate that the institution subsequently purchases, or count as an origination a loan later sold to an affiliate, provided the same loans are not sold several times to inflate their value for CRA purposes. For example, assume that two institutions are affiliated. Institution A originates a loan and claims it as a loan origination. Institution B later purchases the loan. Institution B may count the loan as a purchased loan.

The same institution may not count both the origination and purchase. Thus, for example, if an institution claims loans made by an affiliated mortgage company as loan originations, the institution may not also count the loans as purchased loans if it later purchases the loans from its affiliate. *See also* Q&As § ____.22(c)(2)(ii)—1 and § ____.22(c)(2)(ii)—2.

§ ____.22(c)(2)(ii) If an Institution Elects to Have its Supervisory Agency Consider Loans Within a Particular Lending Category Made by One or More of the Institution's Affiliates in a Particular Assessment Area, the Institution Shall Elect to Have the Agency Consider all Loans Within That Lending Category in That Particular Assessment Area Made by all of the Institution's Affiliates

§ ____.22(c)(2)(ii)—1: Regardless of examination type, how is this constraint on affiliate lending applied?

A1. This constraint prohibits "cherry-picking" affiliate loans within any one category of loans. The constraint requires an institution that elects to have a particular category of affiliate lending in a particular assessment area considered to include all loans of that type made by all of its affiliates in that particular assessment area. For example, assume that an institution has several affiliates, including a mortgage company that makes loans in the institution's assessment area. If the institution elects to include the mortgage company's home mortgage loans, it must include all of its affiliates' home mortgage loans made in its assessment area. In addition, the institution cannot elect to include only those low- and moderate-income home mortgage loans made by its affiliates and not home mortgage loans to middle- and upper-income individuals or areas.

§ ____.*22(c)(2)(ii)—2: Regardless of examination type, how is this constraint applied if an institution's affiliates are also insured depository institutions subject to the CRA?*

A2. Strict application of this constraint against "cherry-picking" to loans of an affiliate that is also an insured depository institution covered by the CRA would produce the anomalous result that the other institution would, without its consent, not be able to count its own loans. Because the Agencies did not intend to deprive an institution subject to the CRA of receiving consideration for its own lending, the Agencies read this constraint slightly differently in cases involving a group of affiliated institutions, some of which are subject to the CRA and share the same assessment area(s). In those circumstances, an institution that elects to include all of its mortgage affiliate's home mortgage loans in its assessment area would not automatically be required to include all home mortgage loans in its assessment area of another affiliate institution subject to the CRA. However, all loans of a particular type made by any affiliate in the institution's assessment area(s) must either be counted by the lending institution or by another affiliate institution that is subject to the CRA. This reading reflects the fact that a holding company may, for business reasons, choose to transact different aspects of its business in different subsidiary institutions. However, the method by which loans are allocated among the institutions for CRA purposes must reflect actual business decisions about the allocation of banking activities among the institutions and should not be designed solely to enhance their CRA evaluations.

§ ____.22(d) Lending by a Consortium or a Third Party

§ ____.*22(d)—1: Will equity and equity-type investments in a third party receive consideration under the lending test?*

A1. If an institution has made an equity or equity-type investment in a third party, community development loans made by the third party may be considered under the lending test. On the other hand, asset-backed and debt securities that do not represent an equity-type interest in a third party will not be considered under the lending test unless the securities are booked by the purchasing institution as a loan. For example, if an institution purchases stock in a CDC that primarily lends in low- and moderate-income areas or to low- and moderate-income individuals in order to promote community development, the institution may claim a pro rata share of the CDC's loans as community development loans. The institution's pro rata share is based on its percentage of equity ownership in the CDC. Q&A § ____.23(b)—1 provides information concerning consideration of an equity or equity-type investment under the investment test and both the lending and investment tests. (Note that in connection with an intermediate small institution's CRA performance evaluation, community development loans, including pro rata shares of community development loans, are considered only in the community development test.)

§ ____.22(d)—2: *Regardless of examination type, how will examiners evaluate loans made by consortia or third parties?*

A2. Loans originated or purchased by consortia in which an institution participates or by third parties in which an institution invests will be considered only if they qualify as community development loans and will be considered only under the community development criterion. However, loans originated directly on the books of an institution or purchased by the institution are considered to have been made or purchased directly by the institution, even if the institution originated or purchased the loans as a result of its participation in a loan consortium. These loans would be considered under the lending test or community development test criteria appropriate to them depending on the type of loan and type of examination.

§ ____.22(d)—3: *In some circumstances, an institution may invest in a third party, such as a community development bank, that is also an insured depository institution and is thus subject to CRA requirements. If the investing institution requests its supervisory Agency to consider its pro rata share of community development loans made by the third party, as allowed under 12 CFR ____.22(d), may the third party also receive consideration for these loans?*

A3. Yes, regardless of examination type, as long as the financial institution and the third party are not affiliates. The regulations state, at 12 CFR ____ .22(c)(2)(i), that two affiliates may not both claim the same loan origination or loan purchase. However, if the financial institution and the third party are not affiliates, the third party may receive consideration for the community development loans it originates, and the financial institution that invested in the third party may also receive consideration for its pro rata share of the same community development loans under 12 CFR ____.22(d).

§ ____.23—Investment Test

§ ____.23(a) Scope of Test

§ ____.23(a)—1: *May an institution, regardless of examination type, receive consideration under the CRA regulations if it invests indirectly through a fund, the purpose of which is community development, as that is defined in the CRA regulations?*

A1. Yes, the direct or indirect nature of the qualified investment does not affect whether an institution will receive consideration under the CRA regulations because the regulations do not distinguish between "direct" and "indirect" investments. Thus, an institution's investment in an equity fund that, in turn, invests in projects that, for example, provide affordable housing to low- and moderate-income individuals, would receive consideration as a qualified investment under the CRA regulations, provided the investment benefits one or more of the institution's assessment area(s) or a broader statewide or regional area(s) that includes one or more of the institution's assessment area(s). Similarly, an institution may receive consideration for a direct qualified investment in a nonprofit organization that, for example, supports affordable housing for low- and moderate-income individuals in the institution's assessment area(s) or a broader statewide or regional area(s) that includes the institution's assessment area(s).

§ ____.23(a)—2: *In order to receive CRA consideration, what information may an institution provide that would demonstrate that an investment in a nationwide fund with a primary purpose of community development will directly or indirectly benefit one or more of the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s)?*

A2. There may be several ways to demonstrate that the institution's investment in a nationwide fund meets the geographic requirements, and the Agencies will employ appropriate flexibility in this regard in reviewing information the institution provides that reasonably supports this determination.

In making this determination, the Agencies will consider any information provided by a financial institution that reasonably demonstrates that the purpose, mandate, or function of the fund includes serving geographies or individuals located within the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s). Typically, information about where a fund's investments are expected to be made or targeted will be found in the fund's prospectus, or other documents provided by the fund prior to or at the time of the institution's investment, and the institution, at its option, may provide such documentation in connection with its CRA evaluation.

Nationwide funds are important sources of investments in low- and moderate-income and underserved communities throughout the country and can be an efficient vehicle for institutions in making qualified investments that help meet community development needs. Nationwide funds may be suitable investment opportunities, particularly for large financial institutions with a nationwide branch footprint. Other financial institutions, including those with a nationwide business focus, may find such funds to be efficient investment vehicles to help meet community development needs in their assessment area(s) or the broader statewide or regional area that includes their assessment area(s). Prior to investing in such a fund, an institution should consider reviewing the fund's investment record to see if it is generally consistent with the institution's investment goals and the geographic considerations in the regulations. Examiners will consider investments in nationwide funds that benefit the institution's assessment area(s). Examiners will also consider investments in nationwide funds that benefit the broader statewide or regional area that includes the institution's assessment area(s) consistent with the treatment detailed in Q&A §____.12(h)—6.

§____.23(b) Exclusion

§____.23(b)—1: *Even though the regulations state that an activity that is considered under the lending or service tests cannot also be considered under the investment test, may parts of an activity be considered under one test and other parts be considered under another test?*

A1. Yes, in some instances the nature of an activity may make it eligible for consideration under more than one of the performance tests. For example, certain investments and related support provided by a large retail institution to a CDC may be evaluated under the lending, investment, and service tests. Under the service test, the institution may receive consideration for any community development services that it provides to the CDC, such as service by an executive of the institution on the CDC's board of directors. If the institution makes an investment in the CDC that the CDC uses to make community development loans, the institution may receive consideration under the lending test for its pro rata share of community development loans made by the CDC. Alternatively, the institution's investment may be considered under the investment test, assuming it is a qualified investment. In addition, an institution may elect to have a part of its investment considered under the lending test and the remaining part considered under the investment test. If the investing institution opts to have a portion of its investment evaluated under the lending test by claiming its pro rata share of the CDC's community development loans, the amount of investment considered under the investment test will be offset by that portion. Thus, the institution would receive consideration under the investment test for only the amount of its investment multiplied by the percentage of the CDC's assets that meet the definition of a qualified investment.

§____.23(b)—2: *If home mortgage loans to low- and moderate-income borrowers have been considered under an institution's lending test, may the institution that originated or purchased them also receive consideration under the investment test if it subsequently purchases mortgage-backed securities that are primarily or exclusively backed by such loans?*

A2. No. Because the institution received lending test consideration for the loans that underlie the securities, the institution may not also receive consideration under the investment test for its purchase of the securities. Of course, an institution may receive investment test consideration for purchases of mortgage-backed securities that are backed by loans to low- and moderate-income individuals as long as the securities are not backed primarily or exclusively by loans that the same institution originated or purchased.

§____.23(e) Performance Criteria

§____.23(e)—1: *When applying the four performance criteria of 12 CFR ____.23(e), may an examiner distinguish among qualified investments based on how much of the investment actually supports the underlying community development purpose?*

A1. Yes. By applying all the criteria, a qualified investment of a lower dollar amount may be weighed more heavily under the investment test than a qualified investment with a higher dollar amount that has fewer qualitative enhancements. The criteria permit an examiner to qualitatively weight certain investments differently or to make other appropriate distinctions when evaluating an institution's record of making qualified investments. For instance, an examiner should take into account that a targeted mortgage-backed security that qualifies as an affordable housing issue that has only 60 percent of its face value supported by loans to low- or moderate-income borrowers would not provide as much affordable housing for low- and moderate-income individuals as a targeted mortgage-backed security with 100 percent of its face value supported by affordable housing loans to low- and moderate-income borrowers. The examiner should describe any differential weighting (or other adjustment), and its basis in the Performance Evaluation. See also Q&A §____.12(t)—8 for a discussion about the qualitative consideration of prior-period investments.

§____.23(e)—2: *How do examiners evaluate an institution's qualified investment in a fund, the primary purpose of which is community development, as defined in the CRA regulations?*

A2. When evaluating qualified investments that benefit an institution's assessment area(s) or a broader statewide or regional area that includes its assessment area(s), examiners will look at the following four performance criteria:

(1) The dollar amount of qualified investments;

(2) The innovativeness or complexity of qualified investments;

(3) The responsiveness of qualified investments to credit and community development needs; and

(4) The degree to which the qualified investments are not routinely provided by private investors.

With respect to the first criterion, examiners will determine the dollar amount of qualified investments by relying on the figures recorded by the institution according to generally accepted accounting principles (GAAP). Although institutions may exercise a range of investment strategies, including short-term investments, long-term investments, investments that are immediately funded, and investments with a binding, up-front commitment that are funded over a period of time, institutions making the same dollar amount of investments over the same number of years, all other performance criteria being equal, would receive the same level of consideration. Examiners will include both new and outstanding investments in this determination. The dollar amount of qualified investments also will include the dollar amount of legally binding commitments recorded by the institution according to GAAP.

The extent to which qualified investments receive consideration, however, depends on how examiners evaluate the investments under the remaining three performance criteria—innovativeness and complexity, responsiveness, and degree to which the investment is not routinely provided by private investors. Examiners also will consider factors relevant to the institution's CRA performance context, such as the effect of outstanding long-term qualified investments, the pay-in schedule, and the amount of any cash call, on the capacity of the institution to make new investments.

§ ____.24—Service Test

§ ____.24(a) Scope of Test

§ ____.24(a)—1: *How do examiners evaluate retail banking services and community development services under the large institution service test?*

A1. Retail banking services and community development services are the two components of the service test and are both important in evaluating a large institution's performance. In evaluating retail banking services, examiners consider the availability and effectiveness of an institution's systems for delivering banking services, particularly in low- and moderate-income geographies and to low- and moderate income individuals; the range of services provided in low-, moderate-, middle-, and upper-income geographies; and the degree to which the services are tailored to meet the needs of those geographies. Examples of retail banking services that improve access to financial services, or decrease costs, for low- or moderate-income individuals include

- low-cost deposit accounts;
- electronic benefit transfer accounts and point of sale terminal systems;
- individual development accounts;
- free or low-cost government, payroll, or other check cashing services; and
- reasonably priced international remittance services.

In evaluating community development services, examiners consider the extent to which the institution provides such services and their innovativeness and responsiveness to community needs. Examples of community development services are listed in Q&A § ____.12(i)—3. Examiners will consider any information provided by the institution that demonstrates community development services benefit low- or moderate-income individuals or are responsive to community development needs.

§ ____.24(d) Performance Criteria—Retail Banking Services

§ ____.24(d)—1: *How do examiners evaluate the availability and effectiveness of an institution's systems for delivering retail banking services?*

A1. Convenient access to full service branches within a community is an important factor in determining the availability of credit and non-credit services. Therefore, the service test performance standards place primary emphasis on full service branches while still considering alternative systems. The principal focus is on an institution's current distribution of branches and its record of opening and closing branches, particularly branches located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals. However, an institution is not required to expand its branch network or operate unprofitable branches. Under the service test, alternative systems for delivering retail banking services are considered only to the extent that they are effective alternatives in providing needed services to low- and moderate-income areas and individuals.

§ ____.24(d)—2: *How do examiners evaluate an institution's activities in connection with Individual Development Accounts (IDA)?*

A2. Although there is no standard IDA program, IDAs typically are deposit accounts targeted to low- and moderate-income families that are designed to help them accumulate savings for education or job-training, down-payment and closing costs on a new home, or start-up capital for a small business. Once participants have successfully funded an IDA, their personal IDA savings are matched by a public or private entity. Financial institution participation in IDA programs comes in a variety of forms, including providing retail banking services to IDA accountholders, providing matching dollars or operating funds to an IDA program, designing or implementing IDA programs, providing consumer financial education to IDA accountholders or prospective accountholders, or other means. The extent of financial institutions' involvement in IDAs and the products and services they offer in connection with the accounts will vary. Thus, subject to 12 CFR ____.23(b), examiners evaluate the actual services and products provided by an institution in connection with IDA programs as one or more of the following: community development services, retail banking services, qualified investments, home mortgage loans, small business loans, consumer loans, or community development loans. *See, e.g.,* Q&A § ____.12(i)—3.

Note that all types of institutions may participate in IDA programs. Their IDA activities are evaluated under the performance criteria of the type of examination applicable to the particular institution.

§ ____.24(d)(3) Availability and Effectiveness of Alternative Systems for Delivering Retail Banking Services

§ ____.24(d)(3)—1: *How do examiners evaluate alternative systems for delivering retail banking services?*

A1. There are a number of alternative systems used by financial institutions to deliver retail banking services to customers. Non-branch delivery systems, such as ATMs, online and mobile banking, and other means by which institutions provide services to their customers evolve over time. No matter the means of delivery, examiners evaluate the extent to which the alternative delivery systems are available and effective in providing financial services to low- and moderate-income geographies and individuals. For example, a system may be determined to be effective based on the accessibility of the system to low- and moderate-income geographies and individuals. To determine whether a financial institution's alternative delivery system is an available and effective means of delivering retail banking services in low- and moderate-income geographies and to low- and moderate-income individuals, examiners may consider a variety of factors, including

- the ease of access, whether physical or virtual;
- the cost to consumers, as compared with the institution's other delivery systems;
- the range of services delivered;
- the ease of use;
- the rate of adoption and use; and
- the reliability of the system.

Examiners will consider any information an institution maintains and provides to examiners demonstrating that the institution's alternative delivery systems are available to, and used by, low- or moderate-income individuals, such as data on customer usage or transactions.

§ ____.24(d)(3)—2: *Are debit cards considered under the service test as an alternative delivery system?*

A2. By themselves, no. However, if debit cards are a part of a larger combination of products, such as a comprehensive electronic banking service, that allows an institution to deliver needed services to low- and moderate-income areas and individuals in its community, the overall delivery system that includes the debit card feature would be considered an alternative delivery system.

§ ____.24(d)(4) Range of Services Provided in Geographies of Different Incomes

§ ____.24(d)(4)—1: *How do examiners evaluate the range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which those services are tailored to meet the needs of those geographies?*

A1. Examiners review both information from the institution's public file and other information provided related to the range of services offered and how they are tailored to meet the particular needs of low- and moderate-income geographies. Examiners always review the information that institutions must maintain in their public files: A list of services generally offered at their branches, including their hours of operation; available loan and deposit products; transaction fees, as well as descriptions, where applicable, of material differences in the availability or cost of services at particular branches. *See* 12 CFR ____.43(a)(5). The information provided by the financial institution to identify the types of services offered and any differences in services among its branches in different geographies may indicate how its services (including, where appropriate, business hours) are tailored to the convenience and needs of its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals. *See* 12 CFR ____, appendix A, section (b)(3). Examiners also review any other information provided by the institution, such as data regarding the costs and features of loan and deposit products, account usage and retention, geographic location of accountholders, the availability of information in languages other than English, and any other relevant information demonstrating that its services are tailored to meet the needs of its customers in the various geographies in its assessment area(s). Any information that institutions may maintain regarding services offered through alternative delivery systems (*see* Q&A § ____.24(d)(3)—1) and through collaborations with government, community, educational or employer organizations to offer or expand the range of services or access to services, particularly designed to meet the needs of their assessment area(s), including low- and moderate-income communities will also be considered. Examiners will also review information provided by the public through comments or community contacts.

§ ____.24(e) Performance Criteria—Community Development Services

§ ____.24(e)—1: *Under what conditions may an institution receive consideration for community development services offered by affiliates or third parties?*

A1. At an institution's option, the Agencies will consider services performed by an affiliate or by a third party on the institution's behalf under the service test if the services provided enable the institution to help meet the credit needs of its community. Indirect services that enhance an institution's ability to deliver credit products or deposit services within its community and that can be quantified may be considered under the service test, if those services have not been considered already under the lending or investment test. *See* Q&A § ____.23(b)–1. For example, an institution that contracts with a community organization to provide home ownership counseling to low- and moderate-income home buyers as part of the institution's mortgage program may receive consideration for that indirect service under the service test. In contrast, donations to a community organization that offers financial services to low- or moderate-income individuals may be considered under the investment test, but would not also be eligible for consideration under the service test. Services performed by an affiliate will be treated the same as affiliate loans and investments made in the institution's assessment area and may be considered if the service is not claimed by any other institution. *See* 12 CFR ____.22(c) and ____.23(c).

§ ____.24(e)—2: *In evaluating community development services, what quantitative and qualitative factors do examiners review?*

A2. The community development services criteria are important factors in the evaluation of a large institution's service test performance. According to the regulation, the Agencies evaluate the extent to which the financial institution provides community development services as well as the innovativeness and responsiveness of such services. Examiners consider both quantitative and qualitative aspects of community development services during the evaluation. Examiners assess quantitative factors to determine the extent to which community development services are offered and used. The review is not limited to a single quantitative factor. For example, quantitative factors may include the number of

- low- or moderate-income participants;
- organizations served;
- sessions sponsored; or
- financial institution staff hours devoted.

Examiners will also consider qualitative factors by assessing the degree to which community development services are innovative or responsive to community needs. *See* Q&As § ____.21(a)—4 and § ____.21(a)—3. These performance criteria recognize that community development services sometimes require special expertise and effort on the part of the institution and provide benefit to the community that would not otherwise be possible. Such an assessment will depend on the impact of a particular activity on community needs and the benefits received by a community. *See* Q&A § ____.28(b)—1. For example, a financial institution employee's unique expertise and service on the board of a community organization may demonstrate these qualitative factors when the employee's ongoing engagement significantly improves the products, services or operations of the community development organization.

Examiners will consider any relevant information provided by the institution and from third parties that documents the extent, innovativeness, and responsiveness of community development services.

§ ____.25—Community Development Test for Wholesale or Limited Purpose Institutions

§ ____.25(a) Scope of Test

§ ____.25(a)—1: *How can certain credit card banks help to meet the credit needs of their communities without losing their exemption from the definition of "bank" in the Bank Holding Company Act (BHCA), as amended by the Competitive Equality Banking Act of 1987 (CEBA)?*

A1. Although the BHCA restricts institutions known as CEBA credit card banks to credit card operations, a CEBA credit card bank can engage in community development activities without losing its exemption under the BHCA. A CEBA credit card bank could provide community development services and investments without engaging in operations other than credit card operations. For example, the bank could provide credit card counseling, or the financial expertise of its executives, free of charge, to community development organizations. In addition, a CEBA credit card bank could make qualified investments, as long as the investments meet the guidelines for passive and noncontrolling investments provided in the BHCA and the Board's Regulation Y. Finally, although a CEBA credit card bank cannot make any loans other than credit card loans, under 12 CFR ____.25(d)(2) (community development test—indirect activities), the bank could elect to have part of its qualified passive and noncontrolling investments in a third-party lending consortium considered as community development lending, provided that the consortium's loans otherwise meet the requirements for community development lending. When assessing a CEBA credit card bank's CRA performance under the community development test, examiners will take into account the bank's performance context. In particular, examiners will consider the legal constraints imposed by the BHCA on the bank's activities, as part of the bank's performance context in 12 CFR ____.21(b)(4).

§ ____.25(d) Indirect Activities

§ ____.25(d)—1: *How are investments in third-party community development organizations considered under the community development test?*

A1. Similar to the lending test for retail institutions, investments in third-party community development organizations may be considered as qualified investments or as community development loans or both (provided there is no double counting), at the institution's option, as described above in the discussion regarding 12 CFR ____ .22(d) and ____.23(b).

§ ____.25(e) Benefit to Assessment Area(s)

§ ____.25(e)—1: *How do examiners evaluate a wholesale or limited purpose institution's qualified investment in a fund that invests in projects nationwide and which has a primary purpose of community development, as that is defined in the regulations?*

A1. If examiners find that a wholesale or limited purpose institution has adequately addressed the needs of its assessment area(s), they will give consideration to qualified investments, as well as community development loans and community development services, by that institution nationwide. In determining whether an institution has adequately addressed the needs of its assessment area(s), examiners will consider qualified investments that benefit a broader statewide or regional area that includes the institution's assessment area(s).

§ ____.25(f) Community Development Performance Rating

§ ____.25(f)—1: *Must a wholesale or limited purpose institution engage in all three categories of community development activities (lending, investment, and service) to perform well under the community development test?*

A1. No, a wholesale or limited purpose institution may perform well under the community development test by engaging in one or more of these activities.

§ ____.26—Small Institution Performance Standards

§ ____.26—1: *When evaluating a small or intermediate small institution's performance, will examiners consider, at the institution's request, retail and community development loans originated or purchased by affiliates, qualified investments made by affiliates, or community development services provided by affiliates?*

A1. Yes. However, a small institution that elects to have examiners consider affiliate activities must maintain sufficient information that the examiners may evaluate these activities under the appropriate performance criteria and ensure that the activities are not claimed by another institution. The constraints applicable to affiliate activities claimed by large institutions also apply to small and intermediate small institutions. *See* Q&As addressing 12 CFR ____.22(c)(2) and related guidance provided to large institutions regarding affiliate activities. Examiners will not include affiliate lending in calculating the percentage of loans and, as appropriate, other lending-related activities located in an institution's assessment area(s).

§ ____.26(a) Performance Criteria

§ ____.26(a)(2) Intermediate Small Institutions

§ ____.26(a)(2)—1: *When is an institution examined as an intermediate small institution?*

A1. When a small institution has met the intermediate small institution asset threshold delineated in 12 CFR ____ .12(u)(1) for two consecutive calendar year-ends, the institution may be examined under the intermediate small institution examination procedures. The regulation does not specify an additional lag period between becoming an intermediate small institution and being examined as an intermediate small institution, as it does for large institutions, because an intermediate small institution is not subject to CRA data collection and reporting requirements. Institutions should contact their primary regulator for information on examination schedules.

§ ____.26(b) Lending Test

§ ____.26(b)—1: *May examiners consider, under one or more of the performance criteria of the small institution performance standards, lending-related activities, such as community development loans and lending-related qualified investments, when evaluating a small institution?*

A1. Yes. Examiners can consider "lending-related activities," including community development loans and lending-related qualified investments, when evaluating the first four performance criteria of the small institution performance test. Although lending-related activities are specifically mentioned in the regulation in connection with only the first three criteria (*i.e.*, loan-to-deposit ratio, percentage of loans in the institution's assessment area(s), and lending to borrowers of different incomes and businesses of different sizes), examiners can also consider these activities when they evaluate the fourth criteria—geographic distribution of the institution's loans.

Although lending-related community development activities are evaluated under the community development test applicable to intermediate small institutions, these activities may also augment the loan-to-deposit ratio analysis (12 CFR ____.26(b)(1)) and the percentage of loans in the intermediate small institution's assessment area(s) analysis (12 CFR ____.26(b)(2)), if appropriate.

§ ____.26(b)—2: *What is meant by "as appropriate" when referring to the fact that lending-related activities will be considered, "as appropriate," under the various small institution performance criteria?*

A2. "As appropriate" means that lending-related activities will be considered when it is necessary to determine whether an institution meets or exceeds the standards for a satisfactory rating. Examiners will also consider other lending-related activities at an institution's request, provided they have not also been considered under the community development test applicable to intermediate small institutions.

§ ____.26(b)—3: *When evaluating a small institution's lending performance, will examiners consider, at the institution's request, community development loans originated or purchased by a consortium in which the institution participates or by a third party in which the institution has invested?*

A3. Yes. However, a small institution that elects to have examiners consider community development loans originated or purchased by a consortium or third party must maintain sufficient information on its share of the community development loans so that the examiners may evaluate these loans under the small institution performance criteria.

§ ____.26(b)—4: *Under the small institution lending test performance standards, will examiners consider both loan originations and purchases?*

A4. Yes, consistent with the other assessment methods in the regulation, examiners will consider both loans originated and purchased by the institution. Likewise, examiners may consider any other loan data the small institution chooses to provide, including data on loans outstanding, commitments, and letters of credit.

§ ____.26(b)—5: *Under the small institution lending test performance standards, how will qualified investments be considered for purposes of determining whether a small institution receives a satisfactory CRA rating?*

A5. The small institution lending test performance standards focus on lending and other lending-related activities. Therefore, examiners will consider only lending-related qualified investments for the purpose of determining whether a small institution that is not an intermediate small institution receives a satisfactory CRA rating.

§ ____.26(b)(1) Loan-to-Deposit Ratio

§ ____.26(b)(1)—1: *How is the loan-to-deposit ratio calculated?*

A1. A small institution's loan-to-deposit ratio is calculated in the same manner that the Uniform Bank Performance Report (UBPR) determines the ratio. It is calculated by dividing the institution's net loans and leases by its total deposits. The ratio is found in the Liquidity and Investment Portfolio section of the UBPR. Examiners will use this ratio to calculate an average since the last examination by adding the quarterly loan-to-deposit ratios and dividing the total by the number of quarters.

§ ____.26(b)(1)—2: *How is the "reasonableness" of a loan-to-deposit ratio evaluated?*

A2. No specific ratio is reasonable in every circumstance, and each small institution's ratio is evaluated in light of information from the performance context, including the institution's capacity to lend, demographic and economic factors present in the assessment area(s), and the lending opportunities available in the assessment area(s). If a small institution's loan-to-deposit ratio appears unreasonable after considering this information, lending performance may still be satisfactory under this criterion taking into consideration the number and the dollar volume of loans sold to the secondary market or the number and amount and innovativeness or complexity of community development loans and lending-related qualified investments.

§ ____.26(b)(1)—3: *If an institution makes a large number of loans off-shore, will examiners segregate the domestic loan-to-deposit ratio from the foreign loan-to-deposit ratio?*

A3. No. Examiners will look at the institution's net loan-to-deposit ratio for the whole institution, without any adjustments.

§ ____.26(b)(2) Percentage of Lending Within Assessment Area(s)

§ ____.26(b)(2)—1: *Must a small institution have a majority of its lending in its assessment area(s) to receive a satisfactory performance rating?*

A1. No. The percentage of loans and, as appropriate, other lending-related activities located in the institution's assessment area(s) is but one of the performance criteria upon which small institutions are evaluated. If the percentage of loans and other lending-related activities in an institution's assessment area(s) is less than a majority, then the institution does not meet the standards for satisfactory performance only under this criterion. The effect on the overall performance rating of the institution, however, is considered in light of the performance context, including information regarding economic conditions; loan demand; the institution's size, financial condition, business strategies, and branching network; and other aspects of the institution's lending record.

§ ____.26(b)(3) & (4) Distribution of Lending Within Assessment Area(s) by Borrower Income and Geographic Location

§ ____.26(b)(3) & (4)—1: *How will a small institution's performance be assessed under these lending distribution criteria?*

A1. Distribution of loans, like other small institution performance criteria, is considered in light of the performance context. For example, a small institution is not required to lend evenly throughout its assessment area(s) or in any particular geography. However, in order to meet the standards for satisfactory performance under this criterion, conspicuous gaps in a small institution's loan distribution must be adequately explained by performance context factors such as lending opportunities in the institution's assessment area(s), the institution's product offerings and business strategy, and institutional capacity and constraints. In addition, it may be impracticable to review the geographic distribution of the lending of an institution with very few demographically distinct geographies within an assessment area. If sufficient information on the income levels of individual borrowers or the revenues or sizes of business borrowers is not available, examiners may use loan size as a proxy for estimating borrower characteristics, where appropriate.

§ ____.26(c) Intermediate Small Institution Community Development Test

§ ____.26(c)—1: *How will the community development test be applied flexibly for intermediate small institutions?*

A1. Generally, intermediate small institutions engage in a combination of community development loans, qualified investments, and community development services. An institution may not simply ignore one or more of these categories of community development, nor do the regulations prescribe a required threshold for community development loans, qualified investments, and community development services. Instead, based on the institution's assessment of community development needs in its assessment area(s), it may engage in different categories of community development activities that are responsive to those needs and consistent with the institution's capacity.

An intermediate small institution has the flexibility to allocate its resources among community development loans, qualified investments, and community development services in amounts that it reasonably determines are most responsive to community development needs and opportunities. Appropriate levels of each of these activities would depend on the capacity and business strategy of the institution, community needs, and number and types of opportunities for community development.

§ ____.26(c)(3) Community Development Services

§ ____.26(c)(3)—1: *What will examiners consider when evaluating the provision of community development services by an intermediate small institution?*

A1. In addition to the examples listed in Q&A § ____.12(i)–3, examiners will consider retail banking services as community development services if they provide benefit to low- or moderate-income individuals. Examples include:

- Low-cost deposit accounts;
- electronic benefit transfer accounts and point of sale terminal systems;
- individual development accounts;
- free or low-cost government, payroll, or other check cashing services; and
- reasonably priced international remittance services.

In addition, providing services to low- and moderate-income individuals through branches and other facilities located in low- and moderate-income, designated disaster, or distressed or underserved nonmetropolitan middle-income areas is considered. Generally, the presence of branches located in low- and moderate-income geographies will help to demonstrate the availability of banking services to low- and moderate-income individuals.

§ ____.26(c)(4) Responsiveness to Community Development Needs

§ ____.26(c)(4)—1: *When evaluating an intermediate small institution's community development record, what will examiners consider when reviewing the responsiveness of community development lending, qualified investments, and community development services to the community development needs of the area?*

A1. When evaluating an intermediate small institution's community development record, examiners will consider not only quantitative measures of performance, such as the number and amount of community development loans, qualified investments, and community development services, but also qualitative aspects of performance. In particular, examiners will evaluate the responsiveness of the institution's community development activities in light of the institution's capacity, business strategy, the needs of the community, and the number and types of opportunities for each type of community development activity (its performance context). Examiners also will consider the results of any assessment by the institution of community development needs, and how the institution's activities respond to those needs.

An evaluation of the degree of responsiveness considers the following factors: The volume, mix, and qualitative aspects of community development loans, qualified investments, and community development services. Consideration of the qualitative aspects of performance recognizes that community development activities sometimes require special expertise or effort on the part of the institution or provide a benefit to the community that would not otherwise be made available. (However, "innovativeness" and "complexity"—factors examiners consider when evaluating a large institution under the lending, investment, and service tests—are not criteria in the intermediate small institutions' community development test.) In some cases, a smaller loan may have more qualitative benefit to a community than a larger loan. Activities are considered particularly responsive to community development needs if they benefit low- and moderate-income individuals in low- or moderate-income geographies, designated disaster areas, or distressed or underserved nonmetropolitan middle-income geographies. Activities are also considered particularly responsive to community development needs if they benefit low- or moderate-income geographies.

§ ____.26(d) Performance Rating

§ ____.26(d)—1: *How can a small institution that is not an intermediate small institution achieve an "outstanding" performance rating?*

A1. A small institution that is not an intermediate small institution that meets each of the standards in the lending test for a "satisfactory" rating and exceeds some or all of those standards may warrant an "outstanding" performance rating. In assessing performance at the "outstanding" level, the Agencies consider the extent to which the institution exceeds each of the performance standards and, at the institution's option, its performance in making qualified investments and providing services that enhance credit availability in its assessment area(s). In some cases, a small institution may qualify for an "outstanding" performance rating solely on the basis of its lending activities, but only if its performance materially exceeds the standards for a "satisfactory" rating, particularly with respect to the penetration of borrowers at all income levels and the dispersion of loans throughout the geographies in its assessment area(s) that display income variation. An institution with a high loan-to-deposit ratio and a high percentage of loans in its assessment area(s), but with only a reasonable penetration of borrowers at all income levels or a reasonable dispersion of loans throughout geographies of differing income levels in its assessment area(s), generally will not be rated "outstanding" based only on its lending performance. However, the institution's performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s) may augment the institution's satisfactory rating to the extent that it may be rated "outstanding."

§ ____.26(d)—2: *Will a small institution's qualified investments, community development loans, and community development services be considered if they do not directly benefit its assessment area(s)?*

A2. Yes. These activities are eligible for consideration if they benefit a broader statewide or regional area that includes a small institution's assessment area(s), as discussed more fully in Q&As § ____.12(h)–6 and § ____.12(h)–7.

§ ____.27—Strategic Plan

§ ____.27(c) Plans in General

§ ____.27(c)—1: *To what extent will the Agencies provide guidance to an institution during the development of its strategic plan?*

A1. An institution will have an opportunity to consult with and provide information to the Agencies on a proposed strategic plan. Through this process, an institution is provided guidance on procedures and on the information necessary to ensure a complete submission. For example, the Agencies will provide guidance on whether the level of detail as set out in the proposed plan would be sufficient to permit Agency evaluation of the plan. However, the Agencies' guidance during plan development and, particularly, prior to the public comment period, will not include commenting on the merits of a proposed strategic plan or on the adequacy of measurable goals.

§ ____.27(c)—2: *How will a joint strategic plan be reviewed if the affiliates have different primary Federal supervisors?*

A2. The Agencies will coordinate review of and action on the joint plan. Each Agency will evaluate the measurable goals for those affiliates for which it is the primary regulator.

§ ____.27(f) Plan Content

§ ____.27(f)(1) Measurable Goals

§ ____.27(f)(1)—1: *How should annual measurable goals be specified in a strategic plan?*

A1. Annual measurable goals (*e.g.,* number of loans, dollar amount, geographic location of activity, and benefit to low- and moderate-income areas or individuals) must be stated with sufficient specificity to permit the public and the Agencies to quantify what performance will be expected. However, institutions are provided flexibility in specifying goals. For example, an institution may provide ranges of lending amounts in different categories of loans. Measurable goals may also be linked to funding requirements of certain public programs or indexed to other external factors as long as these mechanisms provide a quantifiable standard.

§ ____.27(g) Plan Approval

§ ____.27(g)(2) Public Participation

§ ____.27(g)(2)—1: *How will the public receive notice of a proposed strategic plan?*

A1. An institution submitting a strategic plan for approval by the Agencies is required to solicit public comment on the plan for a period of 30 days after publishing notice of the plan at least once in a newspaper of general circulation. The notice should be sufficiently prominent to attract public attention and should make clear that public comment is desired. An institution may, in addition, provide notice to the public in any other manner it chooses.

§ ____.28—Assigned Ratings

§ ____.28—1: *Are innovative lending practices, innovative or complex qualified investments, and innovative community development services required for a "satisfactory" or "outstanding" CRA rating?*

A1. No. The performance criterion of "innovativeness" applies only under the lending, investment, and service tests applicable to large institutions and the community development test applicable to wholesale and limited purpose institutions. Moreover, even under these tests, the lack of innovative lending practices, innovative or complex qualified investments, or innovative community development services alone will not result in a "needs to improve" CRA rating. However, under these tests, the use of innovative lending practices, innovative or complex qualified investments, and innovative community development services may augment the consideration given to an institution's performance under the quantitative criteria of the regulations, resulting in a higher performance rating. See also Q&A § ____.26(c)(4)–1 for a discussion about responsiveness to community development needs under the community development test applicable to intermediate small institutions.

§ ____.28(a) Ratings in General

§ ____.28(a)—1: *How are institutions with domestic branches in more than one state assigned a rating?*

A1. The evaluation of an institution that maintains domestic branches in more than one state ("multistate institution") will include a written evaluation and rating of its CRA record of performance as a whole and in each state in which it has a domestic branch. The written evaluation will contain a separate presentation on a multistate institution's performance for each MSA and the nonmetropolitan area within each state, if it maintains one or more domestic branch offices in these areas. This separate presentation will contain conclusions, supported by facts and data, on performance under the performance tests and standards in the regulation. The evaluation of a multistate institution that maintains a domestic branch in two or more states in a multistate metropolitan area will include a written evaluation (containing the same information described above) and rating of its CRA record of performance in the multistate metropolitan area. In such cases, the statewide evaluation and rating will be adjusted to reflect performance in the portion of the state not within the multistate MSA.

§ ____.28(a)—2: *How are institutions that operate within only a single state assigned a rating?*

A2. An institution that operates within only a single state ("single-state institution") will be assigned a rating of its CRA record based on its performance within that state. In assigning this rating, the Agencies will separately present a single-state institution's performance for each metropolitan area in which the institution maintains one or more domestic branch offices. This separate presentation will contain conclusions, supported by facts and data, on the single-state institution's performance under the performance tests and standards in the regulation.

§ ____.28(a)—3: *How do the Agencies weight performance under the lending, investment, and service tests for large retail institutions?*

A3. A rating of "outstanding," "high satisfactory," "low satisfactory," "needs to improve," or "substantial noncompliance," based on a judgment supported by facts and data, will be assigned under each performance test. Points will then be assigned to each rating as described in the first matrix set forth below. A large retail institution's overall rating under the lending, investment and service tests will then be calculated in accordance with the second matrix set forth below, which incorporates the rating principles in the regulation.

POINTS ASSIGNED FOR PERFORMANCE UNDER LENDING, INVESTMENT AND SERVICE TESTS

	Lending	Service	Investment
Outstanding	12	6	6
High Satisfactory	9	4	4
Low Satisfactory	6	3	3
Needs to Improve	3	1	1
Substantial Noncompliance	0	0	0

COMPOSITE RATING POINT REQUIREMENTS

[Add points from three tests]

Rating	Total points
Outstanding	20 or over.
Satisfactory	11 through 19.
Needs to Improve	5 through 10.
Substantial Noncompliance	0 through 4.

Note: There is one exception to the Composite Rating matrix. An institution may not receive a rating of "satisfactory" unless it receives at least "low satisfactory" on the lending test. Therefore, the total points are capped at three times the lending test score.

§____.28(b) Lending, Investment, and Service Test Ratings

§____.28(b)—1: *How is performance under the quantitative and qualitative performance criteria weighed when examiners assign a CRA rating?*

A1. The lending, investment, and service tests each contain a number of performance criteria designed to measure whether an institution is effectively helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, in a safe and sound manner. Some of these performance criteria are quantitative, such as number and amount, and others, such as the use of innovative or flexible lending practices, the innovativeness or complexity of qualified investments, and the innovativeness and responsiveness of community development services, are qualitative. The performance criteria that deal with these qualitative aspects of performance recognize that these loans, qualified investments, and community development services sometimes require special expertise and effort on the part of the institution and provide a benefit to the community that would not otherwise be possible. As such, the Agencies consider the qualitative aspects of an institution's activities when measuring the benefits received by a community. An institution's performance under these qualitative criteria may augment the consideration given to an institution's performance under the quantitative criteria of the regulations, resulting in a higher level of performance and rating.

§____.28(c) Effect of Evidence of Discriminatory or Other Illegal Credit Practices

§____.28(c)—1: *What is meant by "discriminatory or other illegal credit practices"?*

A1. An institution engages in discriminatory credit practices if it discourages or discriminates against credit applicants or borrowers on a prohibited basis, in violation, for example, of the Fair Housing Act or the Equal Credit Opportunity Act (as implemented by Regulation B). Examples of other illegal credit practices inconsistent with helping to meet community credit needs include violations of

- the Truth in Lending Act regarding rescission of certain mortgage transactions and regarding disclosures and certain loan term restrictions in connection with credit transactions that are subject to the Home Ownership and Equity Protection Act;
- the Real Estate Settlement Procedures Act regarding the giving and accepting of referral fees, unearned fees, or kickbacks in connection with certain mortgage transactions; and
- the Federal Trade Commission Act regarding unfair or deceptive acts or practices. Examiners will determine the effect of evidence of illegal credit practices as set forth in examination procedures and §____.28(c) of the regulation.

Violations of other provisions of the consumer protection laws generally will not adversely affect an institution's CRA rating, but may warrant the inclusion of comments in an institution's performance evaluation. These comments may address the institution's policies, procedures, training programs, and internal assessment efforts.

§____.29—Effect of CRA Performance on Applications

§____.29(a) CRA Performance

§____.29(a)—1: *What weight is given to an institution's CRA performance examination in reviewing an application?*

A1. In reviewing applications in which CRA performance is a relevant factor, information from a CRA examination of the institution is a particularly important consideration. The examination is a detailed evaluation of the institution's CRA performance by its supervisory Agency. In this light, an examination is an important, and often controlling, factor in the consideration of an institution's record. In some cases, however, the examination may not be recent, or a specific issue raised in the application process, such as progress in addressing weaknesses noted by examiners, progress in implementing commitments previously made to the reviewing Agency, or a supported allegation from a commenter, is relevant to CRA performance under the regulation and was not addressed in the examination. In these circumstances, the applicant should present sufficient information to supplement its record of performance and to respond to the substantive issues raised in the application proceeding.

§____.29(a)—2: *What consideration is given to an institution's commitments for future action in reviewing an application by those Agencies that consider such commitments?*

A2. Commitments for future action are not viewed as part of the CRA record of performance. In general, institutions cannot use commitments made in the applications process to overcome a seriously deficient record of CRA performance. However, commitments for improvements in an institution's performance may be appropriate to address specific weaknesses in an otherwise satisfactory record or to address CRA performance when a financially troubled institution is being acquired.

§____.29(b) Interested Parties

§____.29(b)—1: *What consideration is given to comments from interested parties in reviewing an application?*

A1. Materials relating to CRA performance received during the application process can provide valuable information. Written comments, which may express either support for or opposition to the application, are made a part of the record in accordance with the Agencies' procedures, and are carefully considered in making the Agencies' decisions. Comments should be supported by facts about the applicant's performance and should be as specific as possible in explaining the basis for supporting or opposing the application. These comments must be submitted within the time limits provided under the Agencies' procedures.

§____.29(b)—2: *Is an institution required to enter into agreements with private parties?*

A2. No. Although communications between an institution and members of its community may provide a valuable method for the institution to assess how best to address the credit needs of the community, the CRA does not require an institution to enter into agreements with private parties. The Agencies do not monitor compliance with nor enforce these agreements.

§____.41—Assessment Area Delineation

§____.41(a) In General

§____.41(a)—1: *How do the Agencies evaluate "assessment areas" under the CRA regulations?*

A1. The rule focuses on the distribution and level of an institution's lending, investments, and services rather than on how and why an institution delineated its assessment area(s) in a particular manner. Therefore, the Agencies will not evaluate an institution's delineation of its assessment area(s) as a separate performance criterion. Rather, the Agencies will only review whether the assessment area(s) delineated by the institution complies with the limitations set forth in the regulations at 12 CFR ____.41(e).

§ ____.41(a)—2: *If an institution elects to have the Agencies consider affiliate lending, will this decision affect the institution's assessment area(s)?*

A2. If an institution elects to have the lending activities of its affiliates considered in the evaluation of the institution's lending, the geographies in which the affiliate lends do not affect the institution's delineation of assessment area(s).

§ ____.41(a)—3: *Can a financial institution identify a specific racial or ethnic group rather than a geographic area as its assessment area?*

A3. No, assessment areas must be based on geography. The only exception to the requirement to delineate an assessment area based on geography is that an institution, the business of which predominantly consists of serving the needs of military personnel or their dependents who are not located within a defined geographic area, may delineate its entire deposit customer base as its assessment area.

§ ____.41(c) Geographic Area(s) for Institutions Other Than Wholesale or Limited Purpose Institutions

§ ____.41(c)(1) Generally Consist of One or More MSAs or Metropolitan Divisions or One or More Contiguous Political Subdivisions

§ ____.41(c)(1)—1: *Besides cities, towns, and counties, what other units of local government are political subdivisions for CRA purposes?*

A1. Townships and Indian reservations are political subdivisions for CRA purposes. Institutions should be aware that the boundaries of townships and Indian reservations may not be consistent with the boundaries of the census tracts (*i.e.*, geographies) in the area. In these cases, institutions must ensure that their assessment area(s) consists only of whole geographies by adding any portions of the geographies that lie outside the political subdivision to the delineated assessment area(s).

§ ____.41(c)(1)—2: *Are wards, school districts, voting districts, and water districts political subdivisions for CRA purposes?*

A2. No. However, an institution that determines that it predominantly serves an area that is smaller than a city, town, or other political subdivision may delineate as its assessment area the larger political subdivision and then, in accordance with 12 CFR ____.41(d), adjust the boundaries of the assessment area to include only the portion of the political subdivision that it reasonably can be expected to serve. The smaller area that the institution delineates must consist of entire geographies, may not reflect illegal discrimination, and may not arbitrarily exclude low- or moderate-income geographies.

§ ____.41(d) Adjustments to Geographic Area(s)

§ ____.41(d)—1: *When may an institution adjust the boundaries of an assessment area to include only a portion of a political subdivision?*

A1. Institutions must include whole geographies (*i.e.*, census tracts) in their assessment areas and generally should include entire political subdivisions. Because census tracts are the common geographic areas used consistently nationwide for data collection, the Agencies require that assessment areas be made up of whole geographies. If including an entire political subdivision would create an area that is larger than the area the institution can reasonably be expected to serve, an institution may, but is not required to, adjust the boundaries of its assessment area to include only portions of the political subdivision. For example, this adjustment is appropriate if the assessment area would otherwise be extremely large, of unusual configuration, or divided by significant geographic barriers (such as a river, mountain, or major highway system). When adjusting the boundaries of their assessment areas, institutions must not arbitrarily exclude low- or moderate-income geographies or set boundaries that reflect illegal discrimination.

§ ____.41(e) Limitations on Delineation of an Assessment Area

§ ____.41(e)(3) May Not Arbitrarily Exclude Low- or Moderate-Income Geographies

§ ____.41(e)(3)—1: *How will examiners determine whether an institution has arbitrarily excluded low- or moderate-income geographies?*

A1. Examiners will make this determination on a case-by-case basis after considering the facts relevant to the institution's assessment area delineation. Information that examiners will consider may include

- income levels in the institution's assessment area(s) and surrounding geographies;
- locations of branches and deposit-taking ATMs;
- loan distribution in the institution's assessment area(s) and surrounding geographies;
- the institution's size;
- the institution's financial condition; and
- the business strategy, corporate structure, and product offerings of the institution.

§ ____.41(e)(4) May Not Extend Substantially Beyond an MSA Boundary or Beyond a State Boundary Unless Located in a Multistate MSA

§ ____.41(e)(4)—1: *What are the maximum limits on the size of an assessment area?*

A1. An institution may not delineate an assessment area extending substantially across the boundaries of an MSA unless the MSA is in a combined statistical area (CSA)). Although more than one MSA in a CSA may be delineated as a single assessment area, an institution's CRA performance in individual MSAs in those assessment areas will be evaluated using separate median family incomes and other relevant information at the MSA level rather than at the CSA level.

An assessment area also may not extend substantially across state boundaries unless the assessment area is located in a multistate MSA. An institution may not delineate a whole state as its assessment area unless the entire state is contained within an MSA. These limitations apply to wholesale and limited purpose institutions as well as other institutions.

An institution must delineate separate assessment areas for the areas inside and outside an MSA if the area served by the institution's branches outside the MSA extends substantially beyond the MSA boundary. Similarly, the institution must delineate separate assessment areas for the areas inside and outside of a state if the institution's branches extend substantially beyond the boundary of one state (unless the assessment area is located in a multistate MSA). In addition, the institution should also delineate separate assessment areas if it has branches in areas within the same state that are widely separate and not at all contiguous. For example, an institution that has its main office in New York City and a branch in Buffalo, New York, and each office serves only the immediate areas around it, should delineate two separate assessment areas.

§ ____.41(e)(4)—2: *May an institution delineate one assessment area that consists of an MSA and two large counties that abut the MSA but are not adjacent to each other?*

A2. As a general rule, an institution's assessment area should not extend substantially beyond the boundary of an MSA. Therefore, the MSA would be a separate assessment area, and because the two abutting counties are not adjacent to each other and, in this example, extend substantially beyond the boundary of the MSA, the institution would delineate each county as a separate assessment area, assuming branches or deposit-taking ATMs are located in each county and the MSA. So, in this example, there would be three assessment areas. However, if the MSA and the two counties were in the same CSA, then the institution could delineate only one assessment area including them all. But, the institution's CRA performance in the MSAs and the non-MSA counties in that assessment area would be evaluated using separate median family incomes and other relevant information at the MSA and state, non-MSA level, rather than at the CSA level.

§ ____.42—Data Collection, Reporting, and Disclosure

§ ____.42—1: *When must an institution collect and report data under the CRA regulations?*

A1. All institutions except small institutions are subject to data collection and reporting requirements. (''Small institution'' is defined in the Agencies' CRA regulations at 12 CFR ____.12(u).) Examples describing the data collection requirements of institutions, in particular those that have just surpassed the asset-size threshold of a small institution, may be found on the FFIEC Web site at *http://www.ffiec.gov/cra.* All institutions that are subject to the data collection and reporting requirements must report the data for a calendar year (CY) by March 1 of the subsequent year. For example, data for CY 2015 would be reported by March 1, 2016.

The Board of Governors of the Federal Reserve System processes the reports for all of the primary regulators. Data may be submitted on diskette, CD–ROM, or via Internet email.

CRA respondents are encouraged to use the free FFIEC Data Entry Software to send their CRA data. ''Submission via Web'' is the preferred option. CRA respondents may also send a properly encrypted CRA file (using the ''Export to Federal Reserve Board via Internet email'' option) to *CRASUB@FRB.GOV.*

Please mail diskette or CD–ROM submissions to: Federal Reserve Board, Attention: CRA Processing, 20th & Constitution Avenue NW., MS N402, Washington, DC 20551–0001.

For questions about submitting or resubmitting CRA data, please contact the FFIEC at *CRAHELP@FRB.GOV.*

§ ____.42—2: *Should an institution develop its own program for data collection, or will the regulators require a certain format?*

A2. An institution may use the free software that is provided by the FFIEC to reporting institutions for data collection and reporting or develop its own program. Those institutions that develop their own programs may create a data submission using the File Specifications and Edit Validation Rules that have been set forth to assist with electronic data submissions. For information about specific electronic formatting procedures, contact *CRAHELP@FRB.GOV.*

§ ____.42—3: *How should an institution report data on lines of credit?*

A3. Institutions must collect and report data on lines of credit in the same way that they provide data on loan originations. Lines of credit are considered originated at the time the line is approved or increased; and an increase is considered a new origination. Generally, the full amount of the credit line is the amount that is considered originated. In the case of an increase to an existing line, the amount of the increase is the amount that is considered originated and that amount should be reported. However, consistent with the Call Report instructions, institutions would not report an increase to a small business or small farm line of credit if the increase would cause the total line of credit to exceed $1 million, in the case of a small business line, or $500,000, in the case of a small farm line. Of course, institutions may provide information about such line increases to examiners as ''other loan data.''

§ ____.42—4: *Should renewals of lines of credit be collected and/or reported?*

A4. Renewals of lines of credit for small business, small farm, consumer, or community development purposes should be collected and reported, if applicable, in the same manner as renewals of small business or small farm loans. *See* Q&A § ____.42(a)–5. Institutions that are HMDA reporters continue to collect and report home equity lines of credit at their option in accordance with the requirements of 12 CFR part 1003.

§ ____.42—5: *When should merging institutions collect data?*

A5. Three scenarios of data collection responsibilities for the calendar year of a merger and subsequent data reporting responsibilities are described below.

- Two institutions are exempt from CRA collection and reporting requirements because of asset size. The institutions merge. No data collection is required for the year in which the merger takes place, regardless of the resulting asset size. Data collection would begin after two consecutive years in which the combined institution had year-end assets at least equal to the small institution asset-size threshold amount described in 12 CFR ____.12(u)(1).
- Institution A, an institution required to collect and report the data, and Institution B, an exempt institution, merge. Institution A is the surviving institution. For the year of the merger, data collection is required for Institution A's transactions. Data collection is optional for the transactions of the previously exempt institution. For the following year, all transactions of the surviving institution must be collected and reported.
- Two institutions that each are required to collect and report the data merge. Data collection is required for the entire year of the merger and for subsequent years so long as the surviving institution is not exempt. The surviving institution may file either a consolidated submission or separate submissions for the year of the merger but must file a consolidated report for subsequent years.

§ ____.42—6: *Can small institutions get a copy of the data collection software even though they are not required to collect or report data?*

A6. Yes. Any institution that is interested in receiving a copy of the software may download it from the FFIEC Web site at *http://www.ffiec.gov/cra.* For assistance, institutions may send an email to *CRAHELP@FRB.GOV.*

§ ____.42—7: *If a small institution is designated a wholesale or limited purpose institution, must it collect data that it would not otherwise be required to collect because it is a small institution?*

A7. No. However, small institutions that are designated as wholesale or limited purpose institutions must be prepared to identify those loans, investments, and services to be evaluated under the community development test.

§ ____.42(a) Loan Information Required To be Collected and Maintained

§ ____.42(a)—1: *Must institutions collect and report data on all commercial loans of $1 million or less at origination?*

A1. No. Institutions that are not exempt from data collection and reporting are required to collect and report only those commercial loans that they capture in Call Report Schedule RC–C, Part II. Small business loans are defined as those whose original amounts are $1 million or less *and* that were reported as either ''Loans secured by nonfarm or nonresidential real estate'' or ''Commercial and industrial loans'' in Call Report Schedule RC–C, Part I.

§ ____.42(a)—2: *For loans defined as small business loans, what information should be collected and maintained?*

A2. Institutions that are not exempt from data collection and reporting are required to collect and maintain, in a standardized, machine-readable format, information on each small business loan originated or purchased for each calendar year:

- A unique number or alpha-numeric symbol that can be used to identify the relevant loan file.
- The loan amount at origination.
- The loan location.
- An indicator whether the loan was to a business with gross annual revenues of $1 million or less.

The location of the loan must be maintained by census tract. In addition, supplemental information contained in the file specifications includes a date associated with the origination or purchase and whether a loan was originated or purchased by an affiliate. The same requirements apply to small farm loans.

§ ____.42(a)—3: *Will farm loans need to be segregated from business loans?*

A3. Yes.

§ ____.42(a)—4: *Should institutions collect and report data on all agricultural loans of $500,000 or less at origination?*

A4. Institutions are to report those farm loans that they capture in Call Report Schedule RC–C, Part II. Small farm loans are defined as those whose original amounts are $500,000 or less *and* were reported as either ''Loans to finance agricultural production and other loans to farmers'' or ''Loans secured by farmland'' in Call Report Schedule RC–C, Part I.

§ ____.42(a)—5: *Should institutions collect and report data about small business and small farm loans that are refinanced or renewed?*

A5. An institution should collect information about small business and small farm loans that it refinances or renews as loan originations. (A *refinancing* generally occurs when the existing loan obligation or note is satisfied and a new note is written, while a *renewal* refers to an extension of the term of a loan. However, for purposes of small business and small farm CRA data collection and reporting, it is not necessary to distinguish between the two.) When reporting small business and small farm data, however, an institution may only report one origination (including a renewal or refinancing treated as an origination) per loan per year, unless an increase in the loan amount is granted. However, a demand loan that is merely reviewed annually is not reported as a renewal because the term of the loan has not been extended.

If an institution increases the amount of a small business or small farm loan when it extends the term of the loan, it should always report the amount of the increase as a small business or small farm loan origination. The institution should report only the amount of the increase if the original or remaining amount of the loan has already been reported one time that year. For example, a financial institution makes a term loan for $25,000; principal payments have resulted in a present outstanding balance of $15,000. In the next year, the customer requests an additional $5,000, which is approved, and a new note is written for $20,000. In this example, the institution should report both the $5,000 increase and the renewal or refinancing of the $15,000 as originations for that year. These two originations may be reported together as a single origination of $20,000.

§ ____.42(a)—6: *Does a loan to the ''fishing industry'' come under the definition of a small farm loan?*

A6. Yes. Instructions for Call Report Schedule RC—C, Part I include loans ''made for the purpose of financing fisheries and forestries, including loans to commercial fishermen'' as a component of the definition for ''Loans to finance agricultural production and other loans to farmers.'' Call Report Schedule RC–C, Part II, which serves as the basis of the definition for small business and small farm loans in the regulation, captures both ''Loans to finance agricultural production and other loans to farmers'' and ''Loans secured by farmland.''

§ ____.42(a)—7: *How should an institution report a home equity line of credit, part of which is for home improvement purposes and part of which is for small business purposes?*

A7. When an institution originates a home equity line of credit that is for both home improvement and small business purposes, the institution has the option of reporting the portion of the home equity line that is for home improvement purposes as a home improvement loan under HMDA. Examiners would consider that portion of the line when they evaluate the institution's home mortgage lending. When an institution refinances a home equity line of credit into another home equity line of credit, HMDA reporting continues to be optional. If the institution opts to report the refinanced line, the entire amount of the line would be reported as a refinancing and examiners will consider the entire refinanced line when they evaluate the institution's home mortgage lending.

If an institution that has originated a home equity line of credit for both home improvement and small business purposes (or if an institution that has refinanced such a line into another line) chooses not to report a home improvement loan (or a refinancing) under HMDA, and if the line meets the regulatory definition of a ''community development loan,'' the institution should collect and report information on the entire line as a community development loan. If the line does not qualify as a community development loan, the institution has the option of collecting and maintaining (but not reporting) the entire line of credit as ''Other Secured Lines/Loans for Purposes of Small Business.''

§ ____.42(a)—8: *When collecting small business and small farm data for CRA purposes, may an institution collect and report information about loans to small businesses and small farms located outside the United States?*

A8. At an institution's option, it may collect data about small business and small farm loans located outside the United States; however, it cannot report this data because the CRA data collection software will not accept data concerning loan locations outside the United States.

§ ____.42(a)—9: *Is an institution that has no small farm or small business loans required to report under CRA?*

A9. Each institution subject to data reporting requirements must, at a minimum, submit a transmittal sheet, definition of its assessment area(s), and a record of its community development loans. If the institution does not have community development loans to report, the record should be sent with ''0'' in the community development loan composite data fields. An institution that has not purchased or originated any small business or small farm loans during the reporting period would not submit the composite loan records for small business or small farm loans.

§ ____.42(a)—10: *How should an institution collect and report the location of a loan made to a small business or farm if the borrower* *provides an address that consists of a post office box number or a rural route and box number?*

A10. Prudent banking practices and Bank Secrecy Act regulations dictate that institutions know the location of their customers and loan collateral. Further, Bank Secrecy Act regulations specifically state that a post office box is not an acceptable address. Therefore, institutions typically will know the actual location of their borrowers or loan collateral beyond an address consisting only of a post office box.

Many borrowers have street addresses in addition to rural route and box numbers. Institutions should ask their borrowers to provide the street address of the main business facility or farm or the location where the loan proceeds otherwise will be applied. Moreover, in many cases in which the borrower's address consists only of a rural route number, the institution knows the location (*i.e.*, the census tract) of the borrower or loan collateral. Once the institution has this information available, it should assign the census tract to that location (geocode) and report that information as required under the regulation.

However, if an institution cannot determine a rural borrower's street address, and does not know the census tract, the institution should report the borrower's state, county, MSA or metropolitan division, if applicable, and "NA," for "not available," in lieu of a census tract code.

§ ____.42(a)(2) Loan Amount at Origination

§ ____.42(a)(2)—1: *When an institution purchases a small business or small farm loan, in whole or in part, which amount should the institution collect and report—the original amount of the loan or the amount at purchase?*

A1. When collecting and reporting information on purchased small business and small farm loans, including loan participations, an institution collects and reports the amount of the loan at origination, not at the time of purchase. This is consistent with the Call Report's use of the "original amount of the loan" to determine whether a loan should be reported as a "loan to a small business" or a "loan to a small farm" and in which loan size category a loan should be reported. When assessing the volume of small business and small farm loan purchases for purposes of evaluating lending test performance under CRA, however, examiners will evaluate an institution's activity based on the amounts at purchase.

§ ____.42(a)(2)—2: *How should an institution collect data about multiple loan originations to the same business?*

A2. If an institution makes multiple originations to the same business, the loans should be collected and reported as separate originations rather than combined and reported as they are on the Call Report, which reflects loans outstanding, rather than originations. However, if institutions make multiple originations to the same business solely to inflate artificially the number or volume of loans evaluated for CRA lending performance, the Agencies may combine these loans for purposes of evaluation under the CRA.

§ ____.42(a)(2)—3: *How should an institution collect data pertaining to credit cards issued to small businesses?*

A3. If an institution agrees to issue credit cards to a business's employees, all of the credit card lines opened on a particular date for that single business should be reported as one small business loan origination rather than reporting each individual credit card line, assuming the criteria in the "small business loan" definition in the regulation are met. The credit card program's "amount at origination" is the sum of all of the employee/business credit cards' credit limits opened on a particular date. If subsequently issued credit cards increase the small business credit line, the added amount is reported as a new origination.

§ ____.42(a)(3) The Loan Location

§ ____.42(a)(3)—1: *Which location should an institution record if a small business loan's proceeds are used in a variety of locations?*

A1. The institution should record the loan location by either the location of the small business borrower's headquarters or the location where the greatest portion of the proceeds are applied, as indicated by the borrower.

§ ____.42(a)(4) Indicator of Gross Annual Revenue

§ ____.42(a)(4)—1: *When indicating whether a small business borrower had gross annual revenues of $1 million or less, upon what revenues should an institution rely?*

A1. Generally, an institution should rely on the revenues that it considered in making its credit decision. For example, in the case of affiliated businesses, such as a parent corporation and its subsidiary, if the institution considered the revenues of the entity's parent or a subsidiary corporation of the parent as well, then the institution would aggregate the revenues of both corporations to determine whether the revenues are $1 million or less. Alternatively, if the institution considered the revenues of only the entity to which the loan is actually extended, the institution should rely solely upon whether gross annual revenues are above or below $1 million for that entity. However, if the institution considered and relied on revenues or income of a cosigner or guarantor that is not an affiliate of the borrower, such as a sole proprietor, the institution should not adjust the borrower's revenues for reporting purposes.

§ ____.42(a)(4)—2: *If an institution that is not exempt from data collection and reporting does not request or consider revenue information to make the credit decision regarding a small business or small farm loan, must the institution collect revenue information in connection with that loan?*

A2. No. In those instances, the institution should enter the code indicating "revenues not known" on the individual loan portion of the data collection software or on an internally developed system. Loans for which the institution did not collect revenue information may not be included in the loans to businesses and farms with gross annual revenues of $1 million or less when reporting this data.

§ ____.42(a)(4)—3: *What gross revenue should an institution use in determining the gross annual revenue of a start-up business?*

A3. The institution should use the actual gross annual revenue to date (including $0 if the new business has had no revenue to date). Although a start-up business will provide the institution with pro forma projected revenue figures, these figures may not accurately reflect actual gross revenue and, therefore, should not be used.

§ ____.42(a)(4)—4: *When indicating the gross annual revenue of small business or small farm borrowers, do institutions rely on the gross annual revenue or the adjusted gross annual revenue of their borrowers?*

A4. Institutions rely on the gross annual revenue, rather than the adjusted gross annual revenue, of their small business or small farm borrowers when indicating the revenue of small business or small farm borrowers. The purpose of this data collection is to enable examiners and the public to judge whether the institution is lending to small businesses and small farms or whether it is only making small loans to larger businesses and farms.

The regulation does not require institutions to request or consider revenue information when making a loan; however, if institutions do gather this information from their borrowers, the Agencies expect them to collect and rely upon the borrowers' gross annual revenue for purposes of CRA. The CRA regulations similarly do not require institutions to verify revenue amounts; thus, institutions may rely on the gross annual revenue amount provided by borrowers in the ordinary course of business. If an institution does not collect gross annual revenue information for its small business and small farm borrowers, the institution should enter the code "revenues not known." *See* Q&A § ____.42(a)(4)–2.

§ ____.42(b) Loan Information Required To Be Reported

§ ____.42(b)(1) Small Business and Small Farm Loan Data

§ ____.42(b)(1)—1: *For small business and small farm loan information that is collected and maintained, what data should be reported?*

A1. Each institution that is not exempt from data collection and reporting is required to report in machine-readable form annually by March 1 the following information, aggregated for each census tract in which the institution originated or purchased at least one small business or small farm loan during the prior year:

- The number and amount of loans originated or purchased with original amounts of $100,000 or less.
- The number and amount of loans originated or purchased with original amounts of more than $100,000 but less than or equal to $250,000.
- The number and amount of loans originated or purchased with original amounts of more than $250,000 but not more than $1 million, as to small business loans, or $500,000, as to small farm loans.
- To the extent that information is available, the number and amount of loans to businesses and farms with gross annual revenues of $1 million or less (using the revenues the institution considered in making its credit decision).

§ ____.42(b)(2) Community Development Loan Data

§ ____.42(b)(2)—1: *What information about community development loans must institutions report?*

A1. Institutions subject to data reporting requirements must report the aggregate number and amount of community development loans originated and purchased during the prior calendar year.

§ ____.42(b)(2)—2: *If a loan meets the definition of a home mortgage, small business, or small farm loan AND qualifies as a community development loan, where should it be reported? Can Federal Housing Administration, Veterans Affairs, and Small Business Administration loans be reported as community development loans?*

A2. Except for multifamily affordable housing loans, which may be reported by retail institutions both under HMDA as home mortgage loans and as community development loans, in order to avoid double counting, retail institutions must report loans that meet the definition of "home mortgage loan," "small business loan," or "small farm loan" only in those respective categories even if they also meet the definition of "community development loan." As a practical matter, this is not a disadvantage for institutions evaluated under the lending, investment, and service tests because any affordable housing mortgage, small business, small farm, or consumer loan that would otherwise meet the definition of "community development loan" will be considered elsewhere in the lending test. Any of these types of loans that occur outside the institution's assessment area(s) can receive consideration under the borrower characteristic criteria of the lending test. *See* Q&A § ____.22(b)(2) & (3)–4.

Limited purpose and wholesale institutions that meet the size threshold for reporting purposes also must report loans that meet the definitions of home mortgage, small business, or small farm loans in those respective categories. However, these institutions must also report any loans from those categories that meet the regulatory definition of "community development loan" as community development loans. There is no double counting because wholesale and limited purpose institutions are not subject to the lending test and, therefore, are not evaluated on their level and distribution of home mortgage, small business, small farm, and consumer loans.

§ ____.42(b)(2)—3: *When the primary purpose of a loan is to finance an affordable housing project for low- or moderate-income individuals, but, for example, only 40 percent of the units in question will actually be occupied by individuals or families with low or moderate incomes, should the entire loan amount be reported as a community development loan?*

A3. It depends. As long as the primary purpose of the loan is a community development purpose as described in Q&A § ____.12(h)–8, the full amount of the institution's loan should be included in its reporting of aggregate amounts of community development lending. Even though the entire amount of the loan is reported, as noted in Q&A § ____.22(b)(4)–1, examiners may make qualitative distinctions among community development loans on the basis of the extent to which the loan advances the community development purpose.

In addition, if an institution that reports CRA data elects to request consideration for loans that provide mixed-income housing where only a portion of the loan has community development as its primary purpose, such as in connection with a development that has a mixed-income housing component or an affordable housing set-aside required by Federal, state, or local government, the institution must report only the pro rata dollar amount of the portion of the loan that provides affordable housing to low- or moderate-income individuals. The pro rata dollar amount of the total activity will be based on the percentage of units that are affordable. See Q&A § ____.12(h)–8 for a discussion of "primary purpose" of community development describing the distinction between the types of loans that would be reported in full and those for which only the pro rata amount would be reported.

§ ____.42(b)(2)—4: *When an institution purchases a participation in a community development loan, which amount should the institution report—the entire amount of the credit originated by the lead lender or the amount of the participation purchased?*

A4. The institution reports only the amount of the participation purchased as a community development loan. However, the institution uses the entire amount of the credit originated by the lead lender to determine whether the original credit meets the definition of a "loan to a small business," "loan to a small farm," or "community development loan." For example, if an institution purchases a $400,000 participation in a business credit that has a community development purpose, and the entire amount of the credit originated by the lead lender is over $1 million, the institution would report $400,000 as a community development loan.

§ ____.42(b)(2)—5: *Should institutions collect and report data about community development loans that are refinanced or renewed?*

A5. Yes. Institutions should collect information about community development loans that they refinance or renew as loan originations. Community development loan refinancings and renewals are subject to the reporting limitations that apply to refinancings and renewals of small business and small farm loans. *See* Q&A § ____.42(a)–5.

§ ____.42(b)(3) Home Mortgage Loans

§ ____.42(b)(3)—1: *Must institutions that are not required to collect home mortgage loan data by the HMDA collect home mortgage loan data for purposes of the CRA?*

A1. No. If an institution is not required to collect home mortgage loan data by the HMDA, the institution need not collect home mortgage loan data under the CRA. Examiners will sample these loans to evaluate the institution's home mortgage lending. If an institution wants to ensure that examiners consider all of its home mortgage loans, the institution may collect and maintain data on these loans.

§ ____.42(c) Optional Data Collection and Maintenance

§ ____.42(c)(1) Consumer Loans

§ ____.42(c)(1)—1: *What are the data requirements regarding consumer loans?*

A1. There are no data reporting requirements for consumer loans. Institutions may, however, opt to collect and maintain data on consumer loans. If an institution chooses to collect information on consumer loans, it may collect data for one or more of the following categories of consumer loans: Motor vehicle, credit card, home equity, other secured, and other unsecured. If an institution collects data for loans in a certain category, it must collect data for all loans originated or purchased within that category. The institution must maintain these data separately for each category for which it chooses to collect data. The data collected and maintained should include for each loan

- a unique number or alpha-numeric symbol that can be used to identify the relevant loan file;
- the loan amount at origination or purchase;
- the loan location; and
- the gross annual income of the borrower that the institution considered in making its credit decision.

Generally, guidance given with respect to data collection of small business and small farm loans, including, for example, guidance regarding collecting loan location data, and whether to collect data in connection with refinanced or renewed loans, will also apply to consumer loans.

§ ____.42(c)(1)(iv) Income of Borrower

§ ____.42(c)(1)(iv)—1: *If an institution does not consider income when making an underwriting decision in connection with a consumer loan, must it collect income information?*

A1. No. Further, if the institution routinely collects, but does not verify, a borrower's income when making a credit decision, it need not verify the income for purposes of data maintenance.

§ ____.42(c)(1)(iv)—2: *May an institution list "0" in the income field on consumer loans made to employees when collecting data for CRA purposes as the institution would be permitted to do under HMDA?*

A2. Yes.

§ ____.42(c)(1)(iv)—3: *When collecting the gross annual income of consumer borrowers, do institutions collect the gross annual income or the adjusted gross annual income of the borrowers?*

A3. Institutions collect the gross annual income, rather than the adjusted gross annual income, of consumer borrowers. The purpose of income data collection in connection with consumer loans is to enable examiners to determine the distribution, particularly in the institution's assessment area(s), of the institution's consumer loans, based on borrower characteristics, including the number and amount of consumer loans to low-, moderate-, middle-, and upper-income borrowers, as determined on the basis of gross annual income.

The regulation does not require institutions to request or consider income information when making a loan; however, if institutions do gather this information from their borrowers, the Agencies expect them to collect the borrowers' gross annual income for purposes of CRA. The CRA regulations similarly do not require institutions to verify income amounts; thus, institutions may rely on the gross annual income amount provided by borrowers in the ordinary course of business.

§ ____.42(c)(1)(iv)—4: *Whose income does an institution collect when a consumer loan is made to more than one borrower?*

A4. An institution that chooses to collect and maintain information on consumer loans collects the gross annual income of all primary obligors for consumer loans, to the extent that the institution considered the income of the obligors when making the decision to extend credit. Primary obligors include co-applicants and co-borrowers, including co-signers. An institution does not, however, collect the income of guarantors on consumer loans, because guarantors are only secondarily liable for the debt.

§ ____.42(c)(2) Other Loan Data

§ ____.42(c)(2)—1: *Call Report Schedule RC–C, Part II does not allow institutions to report loans for commercial and industrial purposes that are secured by residential real estate, unless the security interest in the nonfarm residential real estate is taken only as an abundance of caution. (See Q&A § ____.12(v)–3.) Loans extended to small businesses with gross annual revenues of $1 million or less may, however, be secured by residential real estate. May an institution collect this information to supplement its small business lending data at the time of examination?*

A1. Yes. If these loans promote community development, as defined in the regulation, the institution should collect and report information about the loans as community development loans. Otherwise, *at the institution's option,* it may collect and maintain data concerning loans, purchases, and lines of credit extended to small businesses and secured by nonfarm residential real estate for consideration in the CRA evaluation of its small business lending. An institution may collect this information as "Other Secured Lines/Loans for Purposes of Small Business" in the individual loan data. This information should be maintained at the institution but should *not* be submitted for central reporting purposes.

§ ____.42(c)(2)—2: *Must an institution collect data on loan commitments and letters of credit?*

A2. No. Institutions are not required to collect data on loan commitments and letters of credit. Institutions may, however, provide for examiner consideration information on letters of credit and commitments.

§ ____.42(c)(2)—3: *Are commercial and consumer leases considered loans for purposes of CRA data collection?*

A3. Commercial and consumer leases are not considered small business or small farm loans or consumer loans for purposes of the data collection requirements in 12 CFR ____.42(a) & (c)(1). However, if an institution wishes to collect and maintain data about leases, the institution may provide this data to examiners as "other loan data" under 12 CFR ____.42(c)(2) for consideration under the lending test.

§ ____.42(d) Data on Affiliate Lending

§ ____.42(d)—1: *If an institution elects to have an affiliate's home mortgage lending considered in its CRA evaluation, what data must the institution make available to examiners?*

A1. If the affiliate is a HMDA reporter, the institution must identify those loans reported by its affiliate under 12 CFR part 1003 (Regulation C, implementing HMDA). At its option, the institution may provide examiners with either the affiliate's entire HMDA Disclosure

Statement or just those portions covering the loans in its assessment area(s) that it is electing to consider. If the affiliate is not required by HMDA to report home mortgage loans, the institution must provide sufficient data concerning the affiliate's home mortgage loans for the examiners to apply the performance tests.

§ ____.43—Content and Availability of Public File

§ ____.43(a) Information Available to the Public

§ ____.43(a)(1) Public Comments Related to an Institution's CRA Performance

§ ____.43(a)(1)—1: *What happens to comments received by the Agencies?*

A1. Comments received by an Agency will be on file at the Agency for use by examiners. Those comments are also available to the public unless they are exempt from disclosure under the Freedom of Information Act.

§ ____.43(a)(1)—2: *Is an institution required to respond to public comments?*

A2. No. All institutions should review comments and complaints carefully to determine whether any response or other action is warranted. A small institution subject to the small institution performance standards is specifically evaluated on its record of taking action, if warranted, in response to written complaints about its performance in helping to meet the credit needs in its assessment area(s). See 12 CFR ____.26(b)(5). For all institutions, responding to comments may help to foster a dialogue with members of the community or to present relevant information to an institution's supervisory Agency. If an institution responds in writing to a letter in the public file, the response must also be placed in that file, unless the response reflects adversely on any person or placing it in the public file violates a law.

§ ____.43(a)(2) CRA Performance Evaluation

§ ____.43(a)(2)—1: *May an institution include a response to its CRA performance evaluation in its public file?*

A1. Yes. However, the format and content of the evaluation, as transmitted by the supervisory Agency, may not be altered or abridged in any manner. In addition, an institution that received a less than satisfactory rating during it most recent examination must include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. *See* 12 CFR ____.43(b)(5). The institution must update the description on a quarterly basis.

§ ____.43(b) Additional Information Available to the Public

§ ____.43(b)(1) Institutions Other Than Small Institutions

§ ____.43(b)(1)—1: *Must an institution that elects to have affiliate lending considered include data on this lending in its public file?*

A1. Yes. The lending data to be contained in an institution's public file covers the lending of the institution's affiliates, as well as of the institution itself, considered in the assessment of the institution's CRA performance. An institution that has elected to have mortgage loans of an affiliate considered must include either the affiliate's HMDA Disclosure Statements for the two prior years or the parts of the Disclosure Statements that relate to the institution's assessment area(s), at the institution's option.

§ ____.43(b)(1)—2: *May an institution retain its CRA disclosure statement in electronic format in its public file, rather than printing a hard copy of the CRA disclosure statement for retention in its public file?*

A2. Yes, if the institution can readily print out its CRA disclosure statement from an electronic medium (*e.g.*, CD, DVD, or Internet Web site) when a consumer requests the public file. If the request is at a branch other than the main office or the one designated branch in each state that holds the complete public file, the institution should provide the CRA disclosure statement in a paper copy, or in another format acceptable to the requestor, within five calendar days, as required by 12 CFR ____.43(c)(2)(ii).

§ ____.43(c) Location of Public Information

§ ____.43(c)—1: *What is an institution's "main office"?*

A1. An institution's main office is the main, home, or principal office as designated in its charter.

§ ____.43(c)—2: *May an institution maintain a copy of its public file on an intranet or the Internet?*

A2. Yes, an institution may keep all or part of its public file on an intranet or the Internet, provided that the institution maintains all of the information, either in paper or electronic form, that is required in 12 CFR ____.43. An institution that opts to keep part or all of its public file on an intranet or the Internet must follow the rules in 12 CFR ____.43(c)(1) and (2) as to what information is required to be kept at a main office and at a branch. The institution also must ensure that the information required to be maintained at a main office and branch, if kept electronically, can be readily downloaded and printed for any member of the public who requests a hard copy of the information.

§ ____.44—Public Notice by Institutions

§ ____.44—1: *Are there any placement or size requirements for an institution's public notice?*

A1. The notice must be placed in the institution's public lobby, but the size and placement may vary. The notice should be placed in a location and be of a sufficient size that customers can easily see and read it.

§ ____.45—Publication of Planned Examination Schedule

§ ____.45—1: *Where will the Agencies publish the planned examination schedule for the upcoming calendar quarter?*

A1. The Agencies may use the **Federal Register**, a press release, the Internet, or other existing Agency publications for disseminating the list of the institutions scheduled for CRA examinations during the upcoming calendar quarter. Interested parties should contact the appropriate Federal financial supervisory Agency for information on how the Agency is publishing the planned examination schedule.

§ ____.45—2: *Is inclusion on the list of institutions that are scheduled to undergo CRA examinations in the next calendar quarter determinative of whether an institution will be examined in that quarter?*

A2. No. The Agencies attempt to determine as accurately as possible which institutions will be examined during the upcoming calendar quarter. However, whether an institution's name appears on the published list does not conclusively determine whether the institution will be examined during that quarter. The Agencies may need to defer a planned examination or conduct an unforeseen examination because of scheduling difficulties or other circumstances.

Appendix A to Part ____—Ratings

Appendix A to Part ____—1: *Must an institution's performance fit each aspect of a particular rating profile in order to receive that rating?*

A1. No. Exceptionally strong performance in some aspects of a particular rating profile may compensate for weak performance in others. For example, a retail institution other than an intermediate small institution that uses non-branch delivery systems to obtain deposits and to deliver loans may have almost all of its loans outside the institution's assessment area(s). Assume that an examiner, after consideration of performance context and other applicable regulatory criteria, concludes that the institution has weak performance under the lending criteria applicable to lending activity, geographic distribution, and borrower characteristics within the assessment area(s). The institution may compensate for such weak performance by exceptionally strong performance in community development lending in its assessment area(s) or a broader statewide or regional area that includes its assessment area(s).

Appendix B to Part ____—CRA Notice

Appendix B to Part ____—1: *What agency information should be added to the CRA notice form?*

A1. The following information should be added to the form:

OCC-supervised institutions only: For all national banks and Federal savings associations (collectively, banks), in connection with the nationwide list of banks that are scheduled for CRA evaluation in a particular quarter, you may insert the following Web site along with the postal mailing address of the deputy comptroller: *http://www.occ.treas.gov.* In addition, in connection with the invitation for comments on the bank's performance in helping to meet community credit needs, you may insert the following email address along with the postal mailing address of the deputy comptroller: *CRACOMMENTS@OCC.TREAS.GOV.*

For community banks, insert in the appropriate blank the postal mailing address of the deputy comptroller of the district in which the institution is located. These addresses can be found at *http://www.occ.gov.* For banks supervised under the large bank program, insert in the appropriate blank the following postal mailing address: "Large Bank Supervision, 400 7th Street SW., Washington, DC 20219–0001." For banks supervised under the midsize/credit card bank program, insert in the appropriate blank the following postal mailing address: "Midsize and Credit Card Bank Supervision, 400 7th Street SW., Washington, DC 20219–0001."

OCC-, FDIC-, and Board-supervised institutions: "Officer in Charge of Supervision" is the title of the responsible official at the appropriate Federal Reserve Bank.

End of text of the Interagency Questions and Answers

Dated: July 6, 2016.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, July 7, 2016.

Robert deV. Frierson,

Secretary of the Board.

Dated at Washington, DC, this 6th day of July, 2016.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2016–16693 Filed 7–22–16; 8:45 am]

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Part III

Small Business Administration

13 CFR Parts 121, 124, 125, et al.
Small Business Mentor Protégé Programs; Final Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 124, 125, 126, 127, and 134

RIN 3245–AG24

Small Business Mentor Protégé Programs

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is amending its regulations to implement provisions of the Small Business Jobs Act of 2010, and the National Defense Authorization Act for Fiscal Year 2013. Based on authorities provided in these two statutes, the rule establishes a Government-wide mentor-protégé program for all small business concerns, consistent with SBA's mentor-protégé program for Participants in SBA's 8(a) Business Development (BD) program. The rule also makes minor changes to the mentor-protégé provisions for the 8(a) BD program in order to make the mentor-protégé rules for each of the programs as consistent as possible. The rule also amends the current joint venture provisions to clarify the conditions for creating and operating joint venture partnerships, including the effect of such partnerships on any mentor-protégé relationships. In addition, the rule makes several additional changes to current size, 8(a) Office of Hearings and Appeals and HUBZone regulations, concerning among other things, ownership and control, changes in primary industry, standards of review and interested party status for some appeals. Finally, SBA notes that the title of this rule has been changed.

DATES: This rule is effective August 24, 2016.

FOR FURTHER INFORMATION CONTACT: Brenda Fernandez, U.S. Small Business Administration, Office of Government Contracting, 409 3rd Street SW., 8th Floor, Washington, DC 20416; (202) 205–7337; *brenda.fernandez@sba.gov.*

SUPPLEMENTARY INFORMATION: This rule initially appeared in the Regulatory Agenda of Fall 2010 with the title "Small Business Jobs Act: Small Business Mentor-Protégé Programs." SBA carried this rule title until the Regulatory Agenda of Spring 2013 when the reference to the Jobs Act was taken out, and the title changed to "Small Business Mentor-Protégé Programs." This change reflected the statutory amendments in section 1641 of NDAA 2013. However, when the proposed rule was published, the title had been changed to: "Small Business Mentor Protégé Program; Small Business Size Regulations; Government Contracting Programs; 8(a) Business Development/ Small Disadvantaged Business Status Determinations; HUBZone Program; Women-Owned Small Business Federal Contract Program; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals." In drafting this final rule, SBA concluded that the simpler current title ("Small Business Mentor Protégé Programs") is easier for the public to understand and would be consistent with the title that has been publicly reported in the Regulatory Agenda since 2013.

I. Background

On September 27, 2010, the President signed into law the Small Business Jobs Act of 2010 (Jobs Act), Public Law 111–240, 124 Stat. 2504, which was designed to protect the interests of small businesses and increase opportunities in the Federal marketplace. With the enactment of the Jobs Act, Congress recognized that mentor-protégé programs serve an important business development function for small business and authorized SBA to establish separate mentor-protégé programs for the Service-Disabled Veteran-Owned Small Business Concern (SDVO SBC) Program, the HUBZone Program, and the Women-Owned Small Business (WOSB) Program, each modeled on SBA's existing mentor-protégé program available to 8(a) Business Development (BD Program Participants. See section 1347(b)(3) of the Jobs Act.

On January 2, 2013, the President signed into law the National Defense Authorization Act for Fiscal Year 2013 (NDAA 2013), Public Law 112–239, 126 Stat. 1632. Section 1641 of the NDAA 2013 authorized SBA to establish a mentor-protégé program for all small business concerns. This section further provides that a small business mentor-protégé program must be identical to the 8(a) BD mentor-protégé program, except that SBA may modify the program to the extent necessary, given the types of small business concerns to be included as protégés. Section 1641 also provides that a Federal department or agency could not carry out its own agency specific mentor-protégé program for small businesses unless the head of the department or agency submitted a plan for such a program to SBA and received the SBA Administrator's approval of the plan. Finally, section 1641 requires the head of each Federal department or agency carrying out an agency-specific mentor-protégé program to report annually to SBA the participants in its mentor-protégé program, the assistance provided to small businesses through the program, and the progress of protégé firms to compete for Federal prime contracts and subcontracts.

On February 5, 2015, SBA published in the **Federal Register** a comprehensive proposal to implement a new Government-wide mentor-protégé program for all small businesses. 80 FR 6618. SBA decided to implement one new small business mentor-protégé program instead of four new mentor-protégé programs (one for small businesses, one for SDVO small businesses, one for WOSBs and one for HUBZone small businesses) since the other three types of small businesses (SDVO, HUBZone and women-owned) would be necessarily included within any mentor-protégé program targeting all small business concerns. SBA did not eliminate the 8(a) BD mentor-protégé program. Thus, the intent was to propose two separate mentor-protégé programs, one for 8(a) BD Participants and one for all small businesses (including 8(a) Participants if they choose to create a small business mentor-protégé relationship instead of a mentor-protégé relationship under the 8(a) BD program). The small business mentor-protégé program was drafted to be as similar to the 8(a) mentor-protégé program as possible.

The proposed rule called for a 60-day comment period, with comments required to be made to SBA by April 6, 2015. The overriding comment SBA received in the first few weeks after the publication was to extend the comment period. In response to these comments, SBA published a notice in the **Federal Register** on April 7, 2015, extending the comment period an additional 30 days to May 6, 2015. 80 FR 18556. In addition to providing a 90-day comment period, SBA also conducted a series of tribal consultations pursuant to Executive Order 13175, Tribal Consultations. SBA conducted three in-person tribal consultations (in Washington, DC on February 26, 2015, in Tulsa, Oklahoma on April 21, 2015, and in Anchorage, Alaska on April 23, 2015) and two telephonic tribal consultations (one on April 7, 2015, and a Hawaii/Native Hawaiian Organization specific one on April 8, 2015).

Currently, the mentor-protégé program available to firms participating in the 8(a) BD program is used as a business development tool in which mentors provide diverse types of business assistance to eligible 8(a) BD protégés. This assistance may include, among other things, technical and/or management assistance; financial assistance in the form of equity investments and/or loans; subcontracts; and/or assistance in performing Federal prime contracts through joint venture arrangements. The explicit purpose of the 8(a) BD mentor-protégé relationship is to enhance the capabilities of protégés and to improve their ability to successfully compete for both government and commercial contracts. Similarly, the mentor-protégé program for all small business concerns is designed to require approved mentors to provide assistance to protégé firms in order to enhance the capabilities of protégés, to assist protégés with meeting their business goals, and to improve the ability of protégés to compete for contracts.

One commenter opposed expanding the mentor-protégé program beyond the 8(a) BD program. The commenter believed that it has not been established that the 8(a) mentor-protégé program is bestowing a substantial benefit on 8(a) Participants, and, therefore, SBA should perform additional research and analysis before expanding the program. SBA disagrees. In the current 8(a) BD mentor-protégé program, in order for any mentor-protégé relationship to continue, the 8(a) protégé firm must demonstrate annually what benefits it has derived from the mentor-protégé relationship. Where the benefits provided to the protégé firm are minimal or where it appears that the relationship has been used primarily to permit a non–8(a) (oftentimes, large) mentor to benefit from contracts with its approved protégé, through one or more joint ventures, that it would otherwise not be eligible for, SBA will terminate the mentor-protégé relationship. The proposed rule also provided that SBA may terminate the mentor-protégé agreement (MPA) where it determines that the parties are not complying with any term or condition of the MPA. This rule requires similar reporting of benefits for non–8(a) protégé firms and similar consequences where the benefits provided to the protégé firm do not adequately justify the mentor-protégé relationship. One commenter requested clarification as to when and how SBA would cancel a MPA. SBA's analysis as to whether a protégé firm is adequately benefitting from the relationship or whether non-compliance with one or more specific terms or conditions of the MPA should warrant termination of the agreement is a fact specific determination to be made based on the totality of the circumstances. SBA would not terminate a particular MPA where there are de minimus or inadvertent violations of the agreement. In addition, it is not SBA's intent to terminate a particular MPA without considering the views of the protégé firm. However, the mere fact that a protégé wants the mentor-protégé relationship to continue will not be dispositive if SBA believes that termination is justified.

Conversely, SBA received a significant number of comments supporting a small business mentor-protégé program. These commenters believed that a small business mentor-protégé program would enable firms that are not in the 8(a) BD program to receive critical business development assistance that would otherwise not be available to them. Many of these commenters expressed support for the opportunity to gain meaningful expertise that would help them to independently perform more complex and higher value contracts in the future.

This rule implements a mentor-protégé program similar to the 8(a) BD mentor-protégé program for all small business concerns. The rule adds this program to a new § 125.9 of SBA's regulations. SBA proposed one program for all small businesses because SBA believed it would be easier for the small business and acquisition communities to use and understand. However, SBA specifically requested comments as to whether SBA should finalize one small business mentor-protégé program, as proposed, or, rather, five separate mentor-protégé programs for the various small business entities. Most commenters supported having one new small business mentor-protégé program instead of four new mentor-protégé programs (one for SDVO small businesses, one for HUBZone small businesses, one for WOSBs, and one for small businesses not falling into one of the other categories). They agreed that it would be less confusing to deal with one new program, rather than four new programs, and that it was not necessary to have four separate mentor-protégé programs since the three subcategories of small business are necessarily included within the overall category of small business. Many of the commenters were concerned, however, that changes could be made to the current 8(a) BD mentor-protégé program. Specifically, commenters were concerned that SBA might want to eliminate the 8(a) BD mentor-protégé program as a separate program and instead roll it into the small business mentor-protégé program. SBA has considered those concerns and has decided to keep the 8(a) BD mentor-protégé program as a separate program. That program has independently operated successfully for a number of years and SBA believes that it serves important business development purposes that should continue to be coordinated through SBA's Office of Business Development, rather than through a separate mentor-protégé office managed elsewhere within the Agency. As such, this final rule makes no changes as to how MPAs are processed for the 8(a) BD program.

In addition, the final rule revises the joint venture provisions contained in § 125.15(b) (for SDVO SBCs, and which are now contained in § 125.18(b)), § 126.616 (for HUBZone SBCs), and § 127.506 (for WOSB and Economically Disadvantaged Women-Owned Small Business (EDWOSB) concerns) to more fully align those requirements to the requirements of the 8(a) BD program. The rule also adds a new § 125.8 to specify requirements for joint ventures between small business protégé firms and their mentors. The rule also makes several additional changes to current size, 8(a) BD and HUBZone regulations that are needed to clarify certain provisions or correct interpretations of the regulations that were inconsistent with SBA's intent. These changes, the comments to the proposed rule, and SBA's response to the comments are set forth more fully below.

In response to the 90-day comment period, SBA received 113 comments, with most of the commenters commenting on multiple proposed provisions. With the exception of comments that did not set forth any rationale or make suggestions, SBA discusses and responds fully to all the comments below.

Summary of Comments and SBA's Response

Definition of Joint Venture (13 CFR 121.103(h))

SBA's size regulations recognize that joint ventures may be formal or informal. The proposed rule amended § 121.103(h) to clarify that every joint venture, whether a separate legal entity or an "informal" arrangement that exists between two (or more) parties, must be in writing. SBA never meant that an informal joint venture arrangement could exist without a formal written document setting forth the responsibilities of all parties to the joint venture. SBA merely intended to recognize that a joint venture need not be established as a limited liability company or other formal separate legal entity.

A few comments opposed that provision of the proposed rule that identified informal joint ventures as partnerships, believing that entering into a formal or informal partnership often comes with certain obligations that may not be intended under a joint venture. For example, partners generally have fiduciary duties to each other, bind one another with their actions, and are jointly and severally liable for the debts of the business. One commenter recommended that SBA should replace the phrase "formal or informal partnership" with the words "contractual affiliation." SBA does not agree that this recommended change would be beneficial. First, SBA believes that the term "contractual affiliation" is not precise and would cause confusion. Moreover, SBA continues to believe that state law would recognize an "informal" joint venture with a written document setting forth the responsibilities of the joint venture partners as some sort of partnership. As such, this rule merely identifies the consequences of forming an informal joint venture and should assist firms in determining what type of joint venture meets the parties' needs in each case. If the joint venture partners do not want the associated consequences of being considered a partnership, then it might be beneficial for the joint venture to be formed as a limited liability company. Therefore, this final rule adopts the proposed language and specifies that a joint venture may be a formal or informal partnership or exist as a separate limited liability company or other separate legal entity. However, regardless of form, the joint venture must be reduced to a written agreement.

In addition, the proposed rule specified that if a joint venture exists as a formal separate legal entity, it may not be populated with individuals intended to perform contracts awarded to the joint venture. This is a change from the current regulation that allows a separate legal entity joint venture to be unpopulated, to be populated with administrative personnel only, or to be populated with its own separate employees that are intended to perform contracts awarded to the joint venture. SBA explained that it is concerned that allowing populated joint ventures between a mentor and protégé would not ensure that the protégé firm and its employees benefit by developing new expertise, experience, and past performance. The separate joint venture entity would gain those things. If the individuals hired by the joint venture to perform the work under the contract did not come from the protégé firm, there is no guarantee that they would ultimately end up working for the protégé firm after the contract is completed. In such a case, the protégé firm would have gained nothing out of that contract. The company itself did not perform work under the contract and the individual employees who performed work did not at any point work for the protégé firm.

SBA received comments on both sides of this issue. Several commenters supported the proposed change, noting that forming a separate legal entity is an undue burden, and questioned whether the firm admitted to the 8(a) program (the protégé small business) would gain any direct benefits if all the work was performed by a separate legal entity. In addition, several of the commenters appreciated SBA's attempt to simplify these regulatory requirements. Several other commenters opposed the elimination of populated joint ventures. Many of these commenters believed that populated joint venture companies are an important mechanism for an entity-owned firm to remain competitive. They argued that this method of business organization facilitates the development of the disadvantaged small business because it makes the company more competitive in the marketplace. Specifically, these commenters pointed out that a populated joint venture has its own lower indirect costs, which, in turn, lowers the cost to the Government. Although SBA understands the benefit of using lower indirect costs from a populated joint venture, SBA continues to believe that a small protégé firm does not adequately enhance its expertise or ability to perform larger and more complex contracts on its own in the future when all the work through a joint venture is performed by a populated separate legal entity. A joint venture between a protégé firm and its mentor is intended to promote the business development of the protégé firm. SBA questions how that can be accomplished where the protégé itself performs no work on a particular joint venture contract, and the employees who do the work for the separate legal entity may or may not have any present or future connection to the protégé firm. In the 8(a) BD context, the purpose is to promote the business development of the firm that was admitted to the 8(a) BD program, the protégé firm, not a separate legal entity that is not itself a certified 8(a) Participant. In addition, populated joint ventures create unique problems in the HUBZone program. HUBZone's unique requirements with regard to employees, principal office, and residency make maintaining HUBZone status while participating in populated joint ventures difficult. In determining whether an individual should be determined an employee, the HUBZone program utilizes the totality of the circumstances approach and oftentimes a firm will have some individuals not on its payroll considered an employee for HUBZone eligibility purposes. Populated joint ventures present a problem because it can be difficult for firms to determine whom should be counted as an employee at any given time.

SBA continues to believe that the benefits received by a protégé from a joint venture are more readily identifiable where the work done on behalf of the joint venture is performed by the protégé and the mentor separately. In such a case, it is much easier to determine that the protégé firm performed at least 40% of all work done by the joint venture, performed more than merely ministerial or administrative work, and otherwise gained experience that could be used to perform a future contract independently. Thus, this rule adopts the proposed language to allow a separate legal entity joint venture to have its own separate employees to perform administrative functions, but not to have its own separate employees to perform contracts awarded to the joint venture.

SBA also proposed to require joint venture partners to allow SBA's authorized representatives, including representatives authorized by the SBA Inspector General, to access its files and inspect and copy records and documents when necessary. Several commenters requested SBA to clarify that the access should be limited to documents and records relating to the joint venture, not to unrelated documents of the joint venture partners themselves. SBA agrees and has amended §§ 124.513(i), 125.8(h), 125.18(b)(8), 126.616(h), and 127.506(i) to clarify that SBA's access would be related to files, records and documents of the joint venture. A few commenters also recommended that SBA should provide reasonable notice before it sought access to such records. SBA disagrees. SBA's Office of Inspector General must be able to have unlimited access when investigating potential violations of SBA's regulations. In a potential fraud case, providing notice could cause a destruction of records or provide time for a party to create the appearance of complying with applicable requirements. As such, this final rule does not require SBA to provide reasonable notice before seeking access to joint venture files, records and documents. SBA notes, however, that in its normal oversight responsibilities not related to any investigation of alleged wrongdoing, SBA would generally provide reasonable notice.

Place of Performance

In the case of *Latvian Connection General Trading and Construction LLC,* B–408633, Sept. 18, 2013, 2013 CPD ¶ 224, GAO ruled that § 19.000(b) of the Federal Acquisition Regulation (FAR) limits the application of FAR part 19 (dealing with SBA's small business programs) to acquisitions conducted in the United States (and its outlying areas). The basis for GAO's ruling was that SBA's regulations were silent on this issue and therefore, the more specific FAR regulation controlled. Heeding this advice, SBA promulgated regulations to address this issue. Specifically, SBA made wholesale changes to 13 CFR 125.2 on October 2, 2013. As a result, SBA issued a final rule recognizing that small business contracting could be used "*regardless of the place of performance.*" 13 CFR 125.2(a) and (c).

The February 5, 2015 proposed rule proposed to add similar language to §§ 124.501, 125.22(b), 126.600, and 127.500, thus specifically authorizing contracting in the 8(a) BD, SDVO, HUBZone and WOSB programs regardless of the place of performance, where appropriate. Although SBA believes that the authority to use those programs in appropriate circumstances overseas already exists, the proposed rule merely sought to make that authority clear. Nothing in the Small Business Act would prohibit the use of those programs in appropriate circumstances overseas. SBA received a few comments on this issue. The commenters supported clarification of the current authority. The regulatory text merely highlights contracting officers' discretionary authority to use these programs where appropriate regardless of the place of performance.

HUBZone Joint Ventures (13 CFR 126.616)

The HUBZone program is a community growth and development program in which businesses are incentivized to establish principal office locations in, and employ individuals from, areas of chronically high unemployment and/or low income in order to stimulate economic development. To further this purpose, the HUBZone program regulations permitted a joint venture only between a HUBZone SBC and another HUBZone SBC. In authorizing a mentor-protégé relationship for HUBZone qualified SBCs, the proposed rule provided language to allow joint ventures for HUBZone contracts between a HUBZone protégé firm and its mentor, regardless of whether the mentor was itself a HUBZone qualified SBC.

SBA received a significant number of comments on this provision. The commenters overwhelmingly supported allowing a HUBZone qualified SBC that obtained an SBA-approved small business mentor-protégé relationship to be able to joint venture with its mentor on all contracts for which the protégé individually qualified, including HUBZone contracts. The commenters felt that such a provision would allow protégés to perform contracts that they otherwise could not have obtained and truly provide them with expertise and past performance that would help them to individually perform additional contracts in the future.

The commenters expressed that they felt that the purposes of the HUBZone program would be appropriately served by allowing non-HUBZone firms to act as mentors and joint venture with protégé HUBZone firms because the HUBZone firm itself would be developed and would necessarily be required to hire additional HUBZone employees if it sought to remain eligible for future HUBZone contracts.

Joint Venture Certifications and Performance of Work Reports (13 CFR 125.8, 125.18, 126.616, 127.506)

The proposed rule required all partners to a joint venture agreement that perform a SDVO, HUBZone, WOSB, or small business set-aside contract to certify to the contracting officer and SBA prior to performing any such contract that they will perform the contract in compliance with the joint venture regulations and with the joint venture agreement. In addition, the parties to the joint venture are required to report to the contracting officer and to SBA how they are meeting or have met the applicable performance of work requirements for each SDVO, HUBZone, WOSB or small business set-aside contract they perform as a joint venture.

SBA received comments both supporting and opposing this approach. One commenter suggested use of an honor system for the reporting. SBA did not view this as a viable alternative. Others believed that certifications in the System for Award Management (SAM) should be sufficient. Other commenters supported the proposed approach as a reasonable way to ensure compliance. SBA believes that affirmative reporting by the joint venture parties to both the contracting officer and SBA will provide the necessary information to track the use and performance of joint ventures. SBA also believes that the certification and reporting requirements implemented in this rule will assist the Government in its ability to deter wrongdoing. Regular reporting and monitoring of the limitations on subcontracting requirements will allow all parties to know where the joint venture stands with respect to those requirements and what must be done to come into compliance in the future if the joint venture's performance is below the required amount at any point in time. A contracting officer will be able to more closely oversee the performance of a contract where the reports show inadequate performance to date.

As such, the final rule adopts the proposed language requiring joint venture partners to annually report compliance to both the contracting officer and SBA.

Tracking Joint Venture Awards

The proposed rule announced that SBA was considering various methods of tracking awards to the joint ventures permitted by SBA's regulations. The possible approaches included: Requiring all joint ventures permitted by the regulations to include in their names "small business joint venture," and, if a mentor-protégé joint venture, to include in their names "mentor-protégé small business joint venture;" requiring contracting officers to identify awards as going to small business joint ventures or to mentor-protégé small business joint ventures; requiring SBCs to amend their SAM entries to specify that they have formed a joint venture; requiring each joint venture to get a separate DUNS number; or a combination of all of these actions. SBA sought to ensure that governmental agencies and members of the public could track joint venture awards, which would promote transparency and accountability. SBA specifically asked for comments on how best to track awards to joint ventures. SBA believes a tracking approach will deter fraudulent or improper conduct, and promote compliance with SBA's regulations.

SBA received numerous comments on these proposals both in support and in opposition to the alternate approaches contemplated. Several commenters opposed the naming requirement, expressing concern about the administrative burden on the participating firms to change names, establish duns numbers and meet other compliance requirements in order to meet this requirement. Other commenters recommended that the cleanest way to track awards to joint ventures would in fact be to require a joint venture to form a new entity in SAM and identity itself to be a joint venture in SAM. Several commenters suggested the SAM system adopt a certification for joint ventures, or alternatively contracting officers designate in SAM that an award was made to a joint venture.

In response to the comments, SBA first notes that any SAM certification process is beyond SBA's authority and outside the scope of this rule. SBA also notes that current participants in the 8(a) BD program annually report to SBA the joint venture awards they have received and how they are meeting the limitations on subcontracting requirements. To track small business joint venture awards, SBA could require similar reporting. However, SBA does not seek to impose any unnecessary burdens on small business. With that in mind, SBA believes that additional reporting is not necessary, but continues to believe that some sort of joint venture identification is required. Thus, this final rule requires joint ventures to be separately identified in SAM so that awards to joint ventures can be properly accounted for. A joint venture must be identified as a joint venture in SAM, with a separate DUNS number and CAGE number than those of the individual parties to the joint venture. In addition, the Entity Type in SAM must be identified as a joint venture, and the individual joint venture partners should also be listed.

Applications for SBA's Small Business Mentor-Protégé Program (13 CFR 125.9)

As noted above, SBA proposed implementing one universal small business mentor-protégé program instead of a separate mentor-protégé program for each type of small business (*i.e.,* HUBZone, SDVO, WOSB program, and small business). In addition, the proposed rule indicated that SBA intended to maintain a separate mentor-protégé program for eligible 8(a) BD Program Participants. The proposed rule provided that a small business seeking a mentor-protégé relationship would be required to submit an application to SBA and that SBA's Director of Government Contracting (D/GC) would review and either approve or decline small business MPAs. SBA's Associate Administrator for BD (AA/BD) would continue to review and approve or decline mentor-protégé relationships in the 8(a) BD program. Under the proposed language, an eligible 8(a) BD Program Participant could choose to seek SBA's approval of a mentor-protégé relationship through the 8(a) BD program, or could seek a small business mentor-protégé relationship through SBA's mentor-protégé program for all small businesses. SBA announced it was considering having one office review and either approve or decline all MPAs to ensure consistency in the process, and specifically sought comments as to whether that approach should be implemented. Finally, the supplementary information to the proposed rule provided that SBA may institute certain "open" and "closed" periods for the receipt of mentor-protégé applications if the number of firms seeking SBA to approve their mentor-protégé relationships becomes unwieldy. In such a case, SBA would then accept mentor-protégé applications only in "open" periods.

SBA received a significant number of comments regarding applications for mentor-protégé relationships. Commenters applauded SBA's proposal to keep the 8(a) BD mentor-protégé program separate from the small business mentor-protégé program. Commenters also supported establishing a separate office to process applications for the small business mentor-protégé program. The commenters were concerned, however, about the administrative burden the additional small business mentor-protégé program will have on SBA's resources. They felt that the volume of firms seeking mentor-protégé relationships could excessively delay SBA's processing of applications. Commenters also opposed the proposal to have open enrollment periods to receive small business mentor-protégé applications. They thought that such a process would cause significant delays in allowing firms to benefit from the mentor-protégé program. They also felt that open enrollment periods could cause firms to miss out on developmental procurement opportunities if they had to wait several months before they could apply to participate in the program. If there were open enrollment periods, then commenters believed that firms should be processed on a first come first served basis, and different types of small businesses should not be given priority or processed first over other types of small businesses.

SBA understands the concerns raised by the commenters. It is not SBA's intent to delay participation in the small business mentor-protégé program. In order to reduce the processing time for a small business mentor-protégé application, SBA considered changing final approval from the D/GC to six senior SBA district directors. SBA thought that six decision makers instead of one might speed up the processing time for applications and eliminate the need for open enrollment periods. However, such a structure could also cause inconsistent results and could require more overall resources (by requiring additional staff in six different locations) than simply providing adequate staff at one location. SBA recognizes that the D/GC is responsible for many other functions, and understands several commenters' concerns that mentor-protégé applications might not be the highest priority of that office. Therefore, SBA intends to establish a separate unit within the Office of Business Development whose sole function would be to process mentor-protégé applications and review the MPAs and the assistance provided under them once approved. This final rule provides that this new unit will process and make determinations with respect to all small business MPAs, with the ultimate decision to be made by the AA/BD or his/her designee. SBA believes that the efficiencies gained by having a dedicated staff for the small business mentor-protégé program will allow SBA to timely process applications for mentor-protégé status, and that the need for open and closed enrollment periods will be reduced. Of course, it is still possible that the number of applications could overwhelm the dedicated small business mentor-protégé unit. If that is the case, open enrollment periods could still be a possibility. Several commenters suggested that SBA may have an enormous volume of applications, and others suggested otherwise. SBA believes that additional information is needed before a decision to control the acceptance of applications is necessary. If the need arises, SBA will provide advance notice to allow potential applicants the opportunity to properly plan.

Mentors (13 CFR 124.520 and 125.9)

The proposed rule permitted any for-profit business concern that demonstrates a commitment and the ability to assist small business concerns to be approved to act as a mentor and receive the benefits of the mentor-protégé relationship. SBA also proposed to limit mentors to for-profit business entities based on the language contained in the NDAA 2013. Section 1641 of the NDAA 2013 added section 45(d)(1) of the Small Business Act, 15 U.S.C. 657r(d)(1), which defines the term mentor to be "a for-profit business concern of any size." In order to make the 8(a) BD mentor-protégé program consistent with the small business mentor-protégé program, SBA proposed that mentors in the 8(a) BD mentor-protégé program must be for profit businesses as well. This was a change for the 8(a) BD program, which previously allowed non-profit entities to be mentors. SBA felt that the change to the 8(a) BD program made sense because

Congress intended the new mentor-protégé program for small businesses to be as similar to the 8(a) BD mentor-protégé program as possible.

A small number of commenters disagreed with having a small business mentor-protégé program at all, and argued that the statutory authorities were discretionary and did not require SBA to implement additional small business mentor-protégé programs. A few of these commenters also felt that if there were such a program, the mentors should be limited to other small businesses. They expressed the view that individual small businesses could be harmed competing against joint ventures in which a large business mentor was a partner. Although SBA understands that the small business mentor-protégé programs authorized by the Jobs Act and the NDAA 2013 are discretionary, SBA believes that they will serve an important developmental function that will enable many small businesses to grow to be able to independently perform procurements that they otherwise would not have been able to perform. In addition, the vast majority of commenters supported a small business mentor-protégé program and many of those comments believed that it would be critical in helping them to advance and be able to perform larger and more complex contracts on their own. SBA agrees with the majority of commenters on this issue and this final rule implements a small business mentor-protégé program. Because the language of section 45(d)(1) of the Small Business Act, 15 U.S.C. 657r(d)(1), specifies a mentor in the small business mentor-protégé program to be "a for-profit business concern of any size" and section 45(a)(2) of the Small Business Act, 15 U.S.C. 657r(a)(2), requires the mentor-protégé program for small businesses to be "identical to the [8(a) BD] mentor-protégé program . . . as in effect on the date of enactment of this section . . .," which authorized large business mentors, this final rule authorizes only other than small businesses that are organized for profit to be mentors. Specifically, the final rule authorizes any "concern," regardless of size, to be a mentor, and the term "concern" has historically been defined in SBA's size regulations to mean a business entity organized for profit.

The proposed rule also required a firm seeking to be a mentor to demonstrate that it "possesses a good financial condition." Several commenters urged SBA to clarify what it means to possess good financial condition. In addition, during the tribal consultations, several individuals spoke of situations where SBA denied a large multi-national firm from being a mentor because one or more financial documents indicated a loss. These individuals believed SBA did not take the proper approach when considering whether a business concern should be a mentor. They stressed that SBA should look only at whether the proposed mentor can deliver what it has said it will bring to the protégé. They believed that anything beyond that was not necessary. SBA agrees that the "good financial condition" requirement has caused some confusion. SBA believes that the key issue is whether a proposed mentor can meet its obligations under its MPA. If a proposed mentor can fulfill those obligations and has the financial wherewithal to provide all of the business development assistance to the protégé firm as described in its MPA, SBA should not otherwise care about the proposed mentor's financial condition. SBA wants to ensure that the protégé firm receives needed business development assistance through the mentor-protégé relationship. If that can be demonstrated, SBA will be satisfied with the arrangement. As such, this final rule changes the requirement that a mentor have good financial condition to one requiring that the mentor must demonstrate that it can fulfill its obligations under the MPA.

In addition, the proposed rule provided that a mentor participating in any SBA-approved mentor-protégé program would generally have no more than one protégé at a time. It also provided that SBA could authorize a concern to mentor more than one protégé at a time where it can demonstrate that the additional mentor-protégé relationship would not adversely affect the development of either protégé firm (*e.g.,* the second firm may not be a competitor of the first firm). The rule also proposed, however, that no firm could be a mentor of more than three protégés in the aggregate at one time under either of the mentor-protégé programs authorized by § 124.520 or § 125.9. A mentor could choose to have: Up to three protégés in the 8(a) BD program; or up to three protégés in the small business program; or one or more protégés in one program and one or more in another program, but no more than three protégés in the aggregate. SBA received comments on both sides of this issue. A few commenters believed that all SBA should care about is whether a mentor can adequately provide needed business development assistance to a proposed protégé. If they could, these commenters believed that a specific firm could be a mentor for more than three protégé firms. They argued that some of the best potential mentors could be large firms that were already mentoring other small businesses, and by limiting the number of protégés that a mentor could have could deprive a particular firm of a mentor that could be an ideal partner. Conversely, several other commenters agreed with SBA that allowing one firm to mentor an unlimited number of protégé firms could allow a large business to unduly benefit from contracts that are intended to primarily benefit small business. One commenter believed that allowing three protégés at the same time for one mentor was too much, and recommended restricting it to two protégé firms at one time. SBA continues to believe that there must be a limit on the number of firms that one business, particularly one that is other than small, can mentor. Although SBA believes that the small business mentor-protégé program will certainly afford business development opportunities to many small businesses, SBA remains concerned about large businesses benefitting disproportionately. If one firm could be a mentor for an unlimited number (or even a larger limited number) of protégés, that firm would receive benefits from the mentor-protégé program through joint ventures and possible stock ownership far beyond the benefits to be derived by any individual protégé. In addition, the 8(a) BD program in effect at the time that the Jobs Act and the NDAA 2013, also limited mentors to having no more than three protégé firms. Since those authorities permitted SBA to implement a small business mentor-protégé program as similar as possible to the 8(a) BD mentor-protégé program, it makes sense that SBA should limit any mentor to a total of three protégé firms. Therefore, this final rule adopts the language of the proposed rule, which permits any mentor to have up to a total of three protégé firms at one time. One commenter requested that SBA clarify that a mentor can have no more than three protégé firms at one time, not three firms in the mentor's entire existence. SBA believes that is adequately spelled out in the regulatory text and does not further clarify that provision in this final rule.

Finally, the proposed rule provided that a protégé in the small business mentor-protégé program may not become a mentor and retain its protégé status. That proposal was patterned off the 8(a) BD mentor-protégé program. SBA received several comments opposing this proposal. The commenters felt that firms that have themselves been protégés may be in the best position to act as mentors. In addition, they argued that just because a firm can act as a mentor to smaller or less experienced firms does not mean that they too don't need help getting to the next level. They did not believe that it would make sense to require a current protégé to terminate the MPA with its mentor before it will be approved as a mentor to another small business concern. The commenters believed that in both the 8(a) BD and small business mentor-protégé programs a firm should be permitted to be both a protégé and mentor in appropriate circumstances. SBA agrees with this position; thus, this final rule provides that SBA may authorize a small business to be both a protégé and a mentor at the same time where the firm can demonstrate that the second relationship will not compete or otherwise conflict with the first mentor-protégé relationship.

Protégés (13 CFR 124.520 and 125.9)

In order to qualify as a protégé, the proposed rule required a business concern to qualify as small for the size standard corresponding to its primary NAICS code. This was a departure for the current 8(a) BD mentor-protégé program, which required an 8(a) Program Participant to: Have a size that is less than half the size standard corresponding to its primary NAICS code; or be in the developmental stage of its 8(a) program participation; or not have received an 8(a) contract. SBA received a significant number of comments supporting the change to loosen the requirements to qualify as a protégé for the 8(a) BD mentor-protégé program. These commenters supported consistency between the two programs and believed that allowing more mature small businesses to participate as protégés in the 8(a) BD mentor-protégé program would facilitate more dynamic developmental assistance and strengthen the contractor base for government procurements. Several commenters also felt that the proposed change made the requirement clearer to understand and implement. Conversely, a few commenters did not support changes to the size of the protégé for the 8(a) BD mentor-protégé program. These commenters believed that the 8(a) mentor-protégé program should not be made available to larger, or successful, or experienced 8(a) Participants, and that allowing participation by firms that are close to exceeding their applicable size standard would thwart the purpose of the program. SBA also received several comments recommending that a firm should be able to form a mentor-protégé relationship as long as it qualified as small for the particular type of work for which a mentor-protégé relationship is sought, even if the firm no longer qualified as small for its primary business activity. These commenters believed that there would be no harm in allowing such a mentor-protégé relationship because the protégé firm would still have to qualify as a small business for any contract opportunity requiring status as a small business that it sought. In other words, if SBA approved a mentor-protégé relationship that focused on assisting a firm to gain access to or expand its experience in a particular industry or NAICS code where the proposed protégé firm qualified as a small business for the size standard corresponding to that NAICS code but not for the size standard corresponding to its primary industry, the protégé firm could form a joint venture with its mentor and be considered small for a contract opportunity only where the protégé firm qualified as small. It could not take that mentor-protégé relationship, form a joint venture and be considered small for contract opportunities in the protégé's primary industry if the protégé did not qualify as small for that NAICS code.

SBA believes that consistency between the 8(a) BD mentor-protégé program and the small business mentor-protégé program is critical, particularly where this final rule authorizes an 8(a) mentor-protégé relationship to transition to a small business mentor-protégé relationship when the 8(a) protégé graduates from or otherwise leaves the 8(a) BD program. Therefore, SBA believes that it does not make sense to have different rules regarding who can qualify as a protégé for the two mentor-protégé programs. As such, SBA does not agree with the commenters who recommended that SBA continue to limit protégés in the 8(a) BD mentor-protégé program only to Participants whose size was less than half the size standard corresponding to their primary industry. Moreover, SBA feels that any small business could gain valuable business development assistance through the mentor-protégé program. For this reason, SBA agrees with the commenters who recommended that a firm that does not qualify as small for its primary NAICS code should be able to form a mentor-protégé relationship in a secondary NAICS code for which it does qualify as small. However, SBA would not authorize mentor-protégé relationships in secondary NAICS codes where the firm had never performed any work in that NAICS code previously or where the protégé would bring nothing to a potential joint venture with its mentor other than its status as a small business. The intent of allowing joint ventures between a protégé firm and its mentor is to provide a protégé firm the opportunity to further develop its expertise and enhance its ability to independently perform similar contracts in the future. The mentor-protégé program is not intended to enable firms that have outgrown a particular size standard to find another industry in which they have no expertise or past performance merely to be able to continue to receive additional contracts as a small business. As long as the firm can demonstrate how the mentor-protégé relationship is a logical progression for the firm and will further develop current capabilities, SBA believes that a mentor-protégé relationship may be appropriate. Thus, the final rule provides that a concern must qualify as small for the size standard corresponding to its primary NAICS code or identify that it is seeking business development assistance with respect to a secondary NAICS code and qualify as small for the size standard corresponding to that NAICS code.

The proposed rule provided that a protégé participating in either of the mentor-protégé programs generally would have no more than one mentor at a time. However, it authorized a protégé to have two mentors where the two relationships would not compete or otherwise conflict with each other and the protégé demonstrates that the second relationship pertains to an unrelated, secondary NAICS code, or the first mentor does not possess the specific expertise that is the subject of the MPA with the second mentor. The comments supported this provision and, therefore, SBA adopts it in this final rule.

In addition, § 125.9(c)(1) of the proposed rule required that SBA verify that a firm qualifies as a small business before approving that firm to act as a protégé in a small business mentor-protégé relationship. SBA was attempting to make eligibility for the small business mentor-protégé program similar to that of the 8(a) BD mentor-protégé program. Just as only firms that have been certified to be eligible to participate in the 8(a) BD program and verified to meet at least one of the three requirements set forth in the prior 8(a) BD regulations could be a protégé, the proposed rule would have permitted only those firms that have been affirmatively determined to be small to qualify as protégés for the small business mentor-protégé program. Several commenters believed that such a requirement was overly burdensome.

These commenters did not believe that size and 8(a) BD status were comparable. They argued that size has always been a self-certification process that is open to review and protest in connection with any individual procurement, and that the same should be true in the mentor-protégé context. They felt that SBA should be able to rely on the size self-certification of a firm seeking to qualify as small for a small business mentor-protégé relationship. The commenters believed that a firm approved to be a small business protégé would not gain any undue benefit from the program merely by entering a mentor-protégé relationship. If a firm that was approved to be a protégé was not in fact small and was awarded a joint venture contract with its mentor based solely on its status as a protégé, of course that would be objectionable. However, because the size protest procedures permit any interested party to protest the size of any apparent successful offeror, the commenters believed that a protégé that was not small would ultimately be found ineligible for award of the contract and, thus, would not unduly benefit from its mentor-protégé relationship. SBA agrees, and as long as it is clear that SBA's approval of a mentor-protégé relationship does not amount to a formal determination of size eligibility, SBA believes that the size protest procedures would in fact be sufficient to protect the integrity of the program.

The proposed rule provided that a protégé firm that graduates or otherwise leaves the 8(a) BD program but continues to qualify as a small business may transfer its 8(a) mentor-protégé relationship to a small business mentor-protégé relationship. Several commenters supported this proposal as a natural extension of SBA's implementation of a small business mentor-protégé program. A few commenters sought clarification, however, as to whether the transfer from an 8(a) BD mentor-protégé relationship to a small business mentor-protégé relationship would be automatic or whether the protégé firm would have to apply and again receive SBA approval. It was not SBA's intent to require a firm to apply to transfer its 8(a) BD mentor-protégé relationship to a small business mentor-protégé relationship. SBA intended that a firm merely inform SBA of its intent to transfer its mentor-protégé relationship. There would be no SBA review or approval required of such a transfer. As such, this final rule adopts the language of the proposed rule and adds clarifying language that a firm seeking to transfer its mentor-protégé relationship could do so by notification, without applying to and receiving approval from SBA to do so. In light of that change, the final rule also deletes § 124.520(d)(5) as unnecessary. That provision provided that SBA would not approve an 8(a) BD mentor-protégé relationship where the proposed protégé firm had less than six months remaining in its 8(a) program term. Because SBA will now permit an 8(a) protégé to transfer its mentor-protégé relationship to a small business mentor-protégé relationship after it leaves the 8(a) BD program (provided the firm continues to qualify as a small business), it does not make sense that SBA would not approve a mentor-protégé relationship for a proposed 8(a) protégé that has less than six months remaining in its program term. SBA will give such a firm the option of pursuing an 8(a) mentor-protégé relationship during its last six months in the 8(a) BD program, and then transferring that relationship to a small business mentor-protégé relationship when the protégé firm leaves the 8(a) BD program, or pursuing a small business mentor-protégé relationship during that same time frame.

Mentor-Protégé Programs of Other Departments and Agencies (13 CFR 125.10)

As noted above, section 1641 of the NDAA 2013 provided that a Federal department or agency cannot carry out its own agency specific mentor-protégé program for small businesses unless the head of the department or agency submitted a plan for such a program to SBA and received the SBA Administrator's approval of the plan. The NDAA 2013 specifically excluded the Department of Defense's mentor-protégé program, but included all other current mentor-protégé programs of other agencies. Under its provisions, a department or agency that is currently conducting a mentor-protégé program (except the Department of Defense) may continue to operate that program for one year but must then go through the SBA approval process in order for the program to continue after one year. Thus, in order to continue to operate any current mentor-protégé program beyond one year after SBA's mentor-protégé regulations are final, each department or agency would be required to obtain the SBA Administrator's approval. These statutory provisions were proposed to be implemented in new § 125.10 of SBA's regulations.

Because the SBA's 8(a) BD and small business mentor-protégé programs will apply to all Government small business contracts, and thus to all Federal departments and agencies, conceivably other agency-specific mentor-protégé programs for small business would not be needed. In the proposed rule, SBA specifically requested comments as to whether other Federal mentor-protégé programs should continue after the one-year grace period expires. SBA understands that many of the agency-specific mentor-protégé programs incentivize mentors to utilize their protégés as subcontractors. For instance, some agencies provide additional evaluation points to a large business submitting an offer on an unrestricted procurement where the business has an active MPA, where the business has used the protégé firm as a subcontractor previously, or where the mentor and protégé are submitting an offer as a joint venture. In addition, some mentor-protégé programs give additional credit to a large business mentor toward its subcontracting plan goals when the mentor uses the protégé as a subcontractor on the mentor's prime contract(s) with the given agency. SBA's mentor-protégé programs assume more of a prime contractor role for protégés, but would also encourage subcontracts from mentors to protégés as part of the developmental assistance that protégés receive from their mentors. Because one or more mentor-protégé programs of other agencies ultimately may not be continued after SBA's various mentor-protégé programs are finalized, SBA requested comments as to whether the subcontracting incentives authorized by mentor-protégé programs of other agencies should specifically be incorporated into SBA's mentor-protégé programs.

SBA received only a few comments regarding this proposed new section. These commenters agreed with the statutory provisions in questioning the utility of other Federal mentor-protégé programs. Their only concern was whether SBA would have the necessary resources to handle mentor-protégé applications for the entire government. SBA is working to assure that it can adequately process mentor-protégé applications, but, as noted above, if the number of firms seeking SBA to approve their mentor-protégé relationships becomes unwieldy, SBA may institute certain "open" and "closed" periods for the receipt of further mentor-protégé applications. In such a case, SBA would then accept mentor-protégé applications only in "open" periods.

Assuming that many agencies will decide not to continue their own mentor-protégé programs, one commenter recommended that SBA should incorporate the subcontracting incentives found in other mentor-protégé programs to ensure that these useful benefits are not eliminated. Although SBA believes that it is up to individual procuring agencies whether to provide subcontracting incentives for any specific procurement, SBA also believes that these incentives should be authorized and used, where appropriate. As such, this final rule identifies subcontracting incentives as a possible benefit to be provided by procuring activities in appropriate circumstances. The final rule authorizes procuring activities to provide incentives in the contract evaluation process to a firm that will provide significant subcontracting work to its SBA-approved protégé firm. SBA does not intend that a mentor receive an incentive where it lists the protégé as a subcontractor that would perform merely ministerial functions that would not enhance the protégé's business development. Any such incentive would be at the discretion of the procuring activity.

Benefits of Mentor-Protégé Relationships (13 CFR 124.520 and 125.9)

As with the 8(a) BD program, under the proposed small business mentor-protégé program, a protégé may joint venture with its SBA-approved mentor and qualify as a small business for any Federal government contract or subcontract, provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the procurement. Commenters supported this provision. They believed that it provides incentives to firms to become mentors and encourages meaningful business development assistance to protégés on any small business contracts for which they qualify as small. As such, SBA adopts the proposed language in this final rule.

This means that a joint venture between a protégé and its approved mentor in the small business mentor-protégé program will be deemed to be a small business concern for any Federal contract or subcontract. It does not mean that such a joint venture affirmatively qualifies for any other small business program. For example, a joint venture between a small business protégé firm and its SBA-approved mentor will be deemed a small business concern for any Federal contract or subcontract for which the protégé qualified as small, but the joint venture will qualify for a contract reserved or set-aside for eligible 8(a) BD, HUBZone SBCs, SDVO SBCs, or WOSBs only if the protégé firm meets the particular program-specific requirements as well.

Several commenters sought clarification of the requirement that the project manager of a joint venture between a protégé firm and its SBA-approved mentor must be an employee of the protégé firm. These comments pointed out that many times a firm that is awarded a contract will hire many, if not all, of the individuals currently performing the work under the contract for a different firm. These commenters recommended that SBA clarify that an individual identified as the project manager need not be an employee of the protégé firm at the time the joint venture makes an offer, as long as there is a commitment by the individual to work for the protégé if the joint venture wins the award. SBA agrees and has clarified that the individual identified as the project manager of the joint venture need not be an employee of the protégé firm at the time the joint venture submits an offer, but, if he or she is not, there must be a signed letter of intent that the individual commits to be employed by the protégé firm if the joint venture is the successful offeror. The final rule also clarifies that the individual identified as the project manager cannot be employed by the mentor and become an employee of the protégé firm for purposes of performance under the joint venture. SBA is concerned that such an "employee" of the protégé has no ties to the protégé, is not bound to stay with the protégé after performance of the contract is complete, and could easily go back to the mentor at that time. If that happens, the business development of the protégé firm would be diminished.

Consistent with the 8(a) BD program, the proposed rule permitted a mentor to a small business to own an equity interest of up to 40% in the protégé firm in order to raise capital for the protégé firm. SBA requested comments as to whether this 40% ownership interest should be a temporary interest, being authorized only as long as the mentor-protégé relationship exists, or whether it should be able to survive the termination of the mentor-protégé relationship. SBA was concerned that allowing a mentor to own 40% of a small business protégé after the mentor-protégé relationship ends may allow far-reaching influence by large businesses that act as mentors and enable them to receive long-term benefits from programs designed to assist only small businesses. Several commenters believed that mentors should not be required to divest themselves of their ownership interest in a protégé firm once the mentor-protégé relationship ends. They noted that, outside the 8(a) BD program (which has ownership restrictions on firms in the same or similar line of business), a large business may currently own a substantial ownership interest in a small business (up to 49% where one individual owns the remaining 51%) without a finding of affiliation, and that the affiliation rules are sufficient to protect against a large business from unduly benefitting from small business contracting programs. After further consideration, SBA agrees. During the mentor-protégé relationship, the protégé firm is shielded from a finding of affiliation where a large business mentor owns 40% of the protégé. Once the mentor-protégé relationship ends, any protection from a finding of affiliation also ends. As such, if the large business mentor's 40% ownership interest is controlling (or deemed to be controlling under SBA's affiliation rules), the two firms will be affiliated and the former protégé would not qualify as a small business. For this reason, there is no need to require a former mentor to divest itself of its 40% ownership interest in the former protégé after the mentor-protégé relationship ends. If it does not divest, the former protégé will be found to be ineligible for any contract as a small business where the 40% ownership interest causes affiliation under SBA's size rules. As such, this final rule does not add any language requiring a mentor to divest itself of its ownership interest in a protégé firm once the mentor-protégé relationship ends.

Written Mentor-Protégé Agreement (13 CFR 124.520 and 125.9)

The key to any mentor-protégé relationship is the benefits to be received by the proposed protégé firm from the proposed mentor. It is essential that such benefits be identified as clearly and specifically as possible. To this end, the proposed rule required that all MPAs be in writing, identifying specifically the benefits intended to be derived by the projected protégé firms. Commenters universally supported requiring a written MPA and that the benefits to be provided through a MPA must be clearly identified. Specifically, they felt that the proposed provision requiring that there be a detailed timeline for the delivery of the assistance in the MPA was critical to ensuring that assistance was timely provided to protégé firms. They understood that without clear and identifiable deliverables set forth in MPAs, both protégé firms and SBA would lack the ability to require mentors to provide specific business development assistance. One commenter noted that the proposed regulatory language identified subcontracts as a benefit that a protégé can receive through its MPA. The commenter agreed that subcontracts are an important developmental benefit, but requested clarification that business development assistance can be gained by a protégé both by receiving a subcontract from its mentor and by subcontracting specific work to its mentor. SBA agrees that a subcontract in either direction can be beneficial to the protégé and that a subcontract from a protégé to its mentor should not, by itself, give rise to a finding of affiliation as something outside the MPA. As such, this final rule clarifies that a subcontract from a protégé to a mentor can be developmental assistance authorized by a MPA.

The proposed rule also required a firm seeking approval to be a protégé in either the 8(a) BD or small business mentor-protégé programs to identify any other mentor-protégé relationship it has through another Federal agency or SBA and provide a copy of each such MPA to SBA. The proposed rule required that the MPA submitted to SBA for approval must identify how the assistance to be provided by the proposed mentor is different from assistance provided to the protégé through another mentor-protégé relationship, either with the same or a different mentor. Several commenters opposed this requirement. They thought that the requirement might cause disputes as to whether the proposed MPA was different enough from a MPA with another agency. One commenter questioned whether a MPA of another agency could be transferred into the SBA's 8(a) BD or small business mentor-protégé program. This commenter reasoned that if one or more mentor-protégé programs of other agencies cease because of the new Government-wide SBA small business mentor-protégé program, a firm should be able to use that agreement, or at least the assistance that had been committed but not yet provided through the agreement, in the SBA's program. SBA continues to believe that assistance that has already been provided or pledged in a MPA of another agency should not be used as the basis for an SBA MPA. The intent is that a protégé firm gain business development assistance that it otherwise would not be able to obtain. SBA agrees, however, that if certain specified assistance was identified in a MPA of another agency, but that assistance had not yet been provided, a firm should be able to choose to terminate the mentor-protégé relationship with the other agency and use the not yet provided assistance as part of the assistance that will be provided through the 8(a) BD or small business mentor-protégé relationship. Therefore, SBA has clarified the regulatory text to better implement its intent in this final rule.

The proposed rule also provided that SBA will review a mentor-protégé relationship annually to determine whether to approve its continuation for another year. SBA intended to evaluate the relationship and determine whether the mentor provided the agreed-upon business development assistance, and whether the assistance provided appears to be worthwhile. SBA also proposed to limit the duration of a MPA to three years and to permit a protégé to have one three-year MPA with one entity and one three-year MPA with another entity, or two three-year MPAs (successive or otherwise) with the same entity. SBA invited comments regarding whether three years is an appropriate length of time and whether SBA should allow a mentor and protégé to enter into an additional MPA upon the expiration of the original agreement. Several commenters did not believe that three years was an appropriate length to authorize a mentor-protégé relationship. A few commenters disagreed with any specific limit on the number of years that a MPA may be in place. They believed that as long as the protégé continues to qualify as a small business and to receive developmental assistance, and the mentor is capable of and actually providing the assistance, then the mentor-protégé relationship should be allowed to continue. A few other commenters thought that three years was too short and recommended a longer length. They believed that in many instances it takes several years in order for both the mentor and protégé to understand how best to work with each other, and three years is not sufficient to allow that process to develop. They felt that the proposed rule would, in effect, limit a protégé to one mentor throughout its life as a small business. Although the rule proposed to authorize two three-year MPAs with two separate mentors, the commenters felt that because it takes a few years to get one mentor-protégé relationship to operate smoothly, most protégés would elect to keep the first MPA for a second three years instead of seeking a new three-year MPA with a different mentor.

SBA believes that the mentor-protégé program serves an important business development function for 8(a) Participants and other small businesses. However, SBA does not believe that any mentor-protégé relationship should last indefinitely (*i.e.*, for as long as the protégé qualifies as a small business). The mentor-protégé program should be a boost to a small business's development that enables the small business to independently perform larger and more complex contracts in the future. It should not be a crutch that prevents small businesses from seeking and performing those larger and more complex contracts on their own. SBA understands that it may take longer than three years to develop a meaningful mentor-protégé relationship. Therefore, the final rule will continue to authorize two three-year MPAs with different mentors, but will allow each to be extended for a second three years provided the protégé has received the agreed-upon business development assistance and will continue to receive additional assistance. SBA intends to limit all small businesses, including 8(a) Participants, to having two mentors. Although an 8(a) Participant can transfer its 8(a) mentor-protégé relationship to a small business mentor-protégé relationship after it leaves the 8(a) BD program, it can have only two mentor-protégé relationships in total. If it transfers its 8(a) mentor-protégé relationship to a small business mentor-protégé relationship after it leaves the program, it may enter into one additional mentor-protégé relationship. It cannot enter into two additional small business mentor-protégé relationships.

The proposed rule also solicited comments on clarifying language not currently contained in the 8(a) mentor-protégé regulations authorizing the continuation of a mentor-protégé relationship where control or ownership of the mentor changes during the term of the MPA. Specifically, the proposed rule provided (for the 8(a) BD and small business mentor-protégé programs) that if control of the mentor changes (through a stock sale or otherwise), the previously approved mentor-protégé relationship may continue provided that, after the change in control, the mentor expresses in writing to SBA that it acknowledges the MPA and that it continues its commitment to fulfill its obligations under the agreement. Commenters supported this provision, and it is not changed in this final rule.

Size of 8(a) Joint Venture (13 CFR 124.513).

The rule also proposed to amend § 124.513 to clarify that interested parties may protest the size of an SBA-approved 8(a) joint venture that is the apparent successful offeror for a competitive 8(a) contract. This change alters the rule expressed in *Size Appeal of Goel Services, Inc. and Grunley/Goel Joint Venture D LLC*, SBA No. SIZ–5320 (2012), which concluded that the size of an SBA-approved 8(a) joint venture could not be protested because SBA had, in effect, determined the joint venture to qualify as small when it approved the joint venture pursuant to § 124.513(e). SBA's decision to authorize a joint venture between a current 8(a) Program Participant and another party by its Office of Business Development was never intended to act as a formal size determination. Only SBA's Office of Government Contracting may issue formal size determinations. SBA received a few comments supporting this proposed change, believing that the size protest procedures should be available with respect to any apparent successful offeror in a competitive 8(a) procurement, including joint ventures. Accordingly, this revision makes clear that unsuccessful offerors on a competitive 8(a) set-aside contract may challenge the size of an apparently successful joint venture offeror.

One commenter encouraged SBA to add additional language to clarify that the only issue that may be challenged is size, and not the underlying terms, conditions, or structure of the joint venture agreement itself. SBA believes such a clarification is not necessary. As part of a size protest, an SBA Office of Government Contracting Area Office will review a joint venture agreement to make sure that the agreement complies with § 124.513, but in no way would that office seek or have the authority to invalidate certain terms or conditions of the joint venture.

A few commenters also sought clarification of SBA's regulations regarding when SBA will determine the eligibility of an 8(a) joint venture. They questioned whether approval would occur as part of the offer and acceptance process or at some later point in time. SBA's regulations provide that SBA approval of an 8(a) joint venture must occur prior to the award of an 8(a) contract. § 124.513(e)(1). That being the case, requiring an eligibility determination for a joint venture as part of the offer and acceptance process would make that requirement meaningless. SBA believes that a district office has flexibility to determine the eligibility of a particular 8(a) joint venture depending upon its workload. As long as that determination occurs any time prior to award, SBA has complied with the regulatory requirement. For a competitive 8(a) procurement, SBA does not receive an offering letter on behalf of any particular 8(a) Participant or potential offeror. As such, requiring SBA to determine the eligibility of a potential joint venture offeror at the time of acceptance would not make any sense. There is no certainty that the joint venture will submit an offer, and, if it does, that it will be the apparent successful offeror. Section 124.507(e) provides that within five working days after being notified by a contracting officer of the apparent successful offeror, SBA will verify the 8(a) eligibility of that entity. If the apparent successful offeror is a joint venture and SBA has not yet approved the joint venture, the five-day period for determining general eligibility would then apply to the joint venture also. If the SBA district office has asked for clarifications or changes with respect to the joint venture and has not received them by the end of this five-day period (and the contracting officer has not granted SBA additional time to conduct an eligibility determination), SBA will have to say that it was unable to verify the eligibility of the apparent successful offeror joint venture.

Agency Consideration of the Past Performance and Capabilities of Team Members (13 CFR 124.513(f), 125.8(e), 125.18(b)(5), 126.616(f), and 127.506(f))

In the proposed rule, SBA proposed that an Agency must consider the past performance of the members of a joint venture when considering the past performance of an entity submitting an offer as a joint venture. SBA proposed this for both 8(a) joint ventures (proposed § 124.513(f)) and small business joint ventures (proposed § 125.8(e)). This proposal was in response to agencies that were considering only the past performance of a joint venture entity, and not considering the past performance of the very entities that created the joint venture entity. Where an agency required the specific joint venture entity itself to have experience and past performance, it made it extremely hard for newly established (and impossible for first-time) joint venture partners to demonstrate positive past performance. Each partner to a joint venture may have individually performed on one or more similar contracts previously, but the joint venture would not be credited with any experience or past performance of its individual partners. Commenters generally supported these changes. A few commenters recommended that SBA clarify that the same policy should also apply to joint ventures in the SDVO, HUBZone and WOSB programs, arguing that joint ventures in those programs could also be hurt where a procuring agency did not consider the experience and past performance of the individual partners to a joint venture. SBA agrees. As such, this final rule adds similar language to that proposed for 8(a) and small business joint ventures to SDVO joint ventures (§ 125.18(b)(5)), HUBZone joint ventures (§ 126.616(f)), and WOSB joint ventures (§ 127.506(f)).

Recertification When an Affiliate Acquires Another Concern (13 CFR 121.404(g)(2)(ii)(A))

In the final rule, SBA is clarifying its position that recertification is required when an affiliate of an entity acquires another concern. Under SBA's general principles of affiliation, if a firm is an affiliate it means that one entity controls or has the power to control the other or a third party controls both, and SBA aggregates the receipts or employees of the concern in question and its affiliates. In our view, an acquisition by an affiliate must be deemed an acquisition by the concern in question. Otherwise, firms could easily circumvent SBA's recertification rules by simply creating affiliates to acquire or merge with other firms. The clear intent of SBA's recertification rule was to require recertification when an entity exceeds the size standard due to acquisition, merger or novation, and there is no public policy rationale for not requiring recertification based on the whether it is the entity in question that acquires another concern, or an affiliate of the entity in question. The bottom line is the entity, including its affiliates, no longer qualifies as small and agencies should not receive future small business credit for dollars awarded to the concern in question, or its affiliates.

Establishing Social Disadvantage for the 8(a) BD Program (13 CFR 124.103)

SBA also proposed amendments to § 124.103(c) in order to clarify that an individual claiming social disadvantage must present a combination of facts and evidence which by itself establishes that the individual has suffered social disadvantage that has negatively impacted his or her entry into or advancement in the business world. Under the proposed rule, SBA could disregard a claim of social disadvantage where a legitimate alternative ground for an adverse action exists and the individual has not presented evidence that would render his/her claim any more likely than the alternative ground. A statement that a male co-worker received higher compensation or was promoted over a woman does not amount to an incident of social disadvantage by itself. Additional facts are necessary to establish an instance of social disadvantage. A statement that a male co-worker received higher compensation or was promoted over a woman and that the woman had the same or superior qualifications and responsibilities would constitute an incident of social disadvantage.

A few commenters opposed this proposed change. They did not believe that it would be appropriate to require proof of certain events that are not easily documented. One commenter noted that SBA currently permits individuals to prove social disadvantage with affidavits and sworn statements attesting to events in their lives that they believe were motivated by bias or discrimination, and questioned how an individual could in fact present additional evidence to prove his or her claim of alleged discriminatory conduct. SBA believes that these commenters misunderstood SBA's intent. SBA does not intend that individuals provide additional supporting documentation or evidence. Rather, SBA is merely looking for the individual's statement to contain a more complete picture. As noted in the proposed rule, the example of a man being promoted over a woman without additional facts does not lead to a more likely than not conclusion of discriminatory conduct. If the man had 10 years of experience to the woman's 3 years of experience, there could be a legitimate reason for his promotion over the woman. However, if she can say that the two had similar experience and qualifications and yet he was promoted and she was not, her claim of discriminatory conduct would have merit. All SBA is looking for is the complete picture, or additional facts, that would make an individual's claim of bias or discriminatory conduct more likely than not. Absent any evidence to the contrary, SBA would continue to rely on affidavits and sworn statements, and as long as those statements presented a clear picture, they would be sufficient to establish an instance of social disadvantage.

SBA is not intending to raise the evidentiary burden placed on an 8(a) applicant above the preponderance of the evidence standard. SBA is not seeking definitive proof, but rather additional facts to support the claim that a negative outcome (*e.g.,* failure to receive a promotion or needed training) was based on discriminatory conduct instead of one or more legitimate non-discriminatory reasons. It is not SBA's intent to disbelieve an applicant. In fact, SBA intends to rely on personal narratives to support claims of social disadvantage. As long as those claims are complete and are not contradictory, SBA will depend solely on the narratives, and consider them to be instances of social disadvantage.

Control of an 8(a) BD Applicant or Participant

Section 124.106 of SBA's regulations currently provides that one or more disadvantaged individuals must control the daily business operations of an 8(a) BD applicant or Participant. In determining whether the experience of one or more disadvantaged individuals claiming to manage the applicant or Participant is sufficient for SBA to determine that control exists, SBA's regulations require that the individuals must have managerial experience "of the extent and complexity needed to run the concern." Although the regulations also provide that a "disadvantaged individual need not have the technical expertise or possess a required license to be found to control an applicant or Participant," several comments indicated that there is confusion as to what type of managerial experience is needed to satisfy SBA's requirements. SBA did not intend to require in all instances that a disadvantaged individual must have managerial experience in the same or similar line of work as the applicant or Participant. A middle manager in a multi-million dollar large business or a vice president in a concern qualifying as small but nevertheless substantial may have gained sufficient managerial experience in a totally unrelated business field. The words "of the extent and complexity needed to run the concern" were meant to look at the degree of management experience, not the field in which that experience was gained. For example, an individual who has been a middle manager of a large aviation firm for 20 years and can demonstrate overseeing the work of a substantial number of employees may be deemed to have managerial experience of the extent and complexity needed to run a five-employee applicant firm whose primary industry category was in emergency management consulting even though that individual had no technical knowledge relating to the emergency management consulting field. SBA believes, however, that more specific industry-related experience may be needed in appropriate circumstances to ensure that the disadvantaged individual(s) claiming to control the day-to-day operations of the firm do so in fact. This would be particularly true where a non-disadvantaged owner (or former owner) who has experience related to the industry is actively involved in the day-to-day management of the firm. In order to clarify SBA's intent, this rule adds language to § 124.106 to specify that management experience need not be related to the same or similar industry as the primary industry classification of the applicant or Participant.

8(a) BD Application Processing (13 CFR 124.202, 124.203, 124.104(b), and 124.108(a))

SBA's regulations require applicants to the 8(a) BD program to submit certain specified supporting documentation, including financial statements, copies of signed Federal personal and business tax returns and individual and business bank statements. The regulations also required that an applicant must submit a signed IRS Form 4506T, Request for Copy or Transcript of Tax Form, in all cases. A commenter questioned the need for every applicant to submit IRS Form 4506T. SBA agrees that this form is not needed in every case. SBA always has the right to request any applicant to submit specific information that may be needed in connection with a specific application. As long as SBA's regulations clearly provide that SBA may request any additional documents SBA deems necessary to determine whether a specific applicant is eligible to participate in the 8(a) BD program, SBA will be able to request that a particular firm submit IRS Form 4506T where SBA believes it to be appropriate. As such, this final rule eliminates the requirement from § 124.203 that an applicant must submit IRS Form 4506T in very case, and clarifies that SBA may request additional documentation when necessary.

In addition, a commenter noted that SBA's regulations provide that applications for the 8(a) BD program must generally be filed electronically, and questioned the need to allow hard copy applications at all. The commenter was concerned that there is a greater possibility for one or more attachments to be misplaced when an applicant files a hard copy application, that SBA staff could incorrectly transpose information when putting it into an electronic format, and that in today's business world there is no excuse for not having access to the internet and SBA's electronic application. SBA agrees. As such, this final rule amends § 124.202 to require applications to be filed electronically, with the understanding that certain supporting documentation may also be required under § 124.203.

Section 124.203 also requires that an applicant must provide a wet signature from each individual claiming social disadvantage status. Several commenters questioned the need for "wet" signatures, arguing that this requirement placed a significant burden on applicants. These commenters noted that an applicant that files an electronic

8(a) BD application must also sign and manually send a wet signature to SBA. They argued that such a requirement did not make sense, as long as the individual(s) upon whom eligibility is based take responsibility for any information submitted on behalf of the applicant. SBA agrees and has eliminated the requirement for a wet signature. Any electronic signing protocol must ensure the Agency is able to specifically identify the individual making the representation in an electronic system. As long as applicants know that the individual(s) upon whom eligibility is based take responsibility for the accuracy and truthfulness of any information submitted on behalf of the applicant, an electronic, uploaded signature should be sufficient.

SBA's regulations also provided that if during the processing of an application, SBA receives adverse information regarding possible criminal conduct by the applicant or any of its principals, SBA would automatically suspend further processing of the application and refer it to SBA's Office of Inspector General (OIG) for review. Commenters believed that both of these provisions unnecessarily delayed SBA's processing of 8(a) applications. These commenters believed that referral to SBA's OIG should not occur in every instance, such as where a minor infraction occurred many years ago, but that SBA should have the discretion to refer matters to SBA's OIG in appropriate instances. SBA is committed to reducing the processing time for 8(a) applications and agrees that mandatory OIG referral may be unnecessary. SBA agrees that an application evidencing a 20 year old disorderly conduct offense for an individual claiming disadvantaged status when that individual was in college should not be referred to the OIG where that is the only instance of anything concerning the individual's good character. Such an offense has nothing to do with the individual's business integrity. In addition, even if it did, an offense that was that old (with no other instances of such misconduct) could also be determined not to be relevant for a present good character determination, and thus, not be one that caused SBA to suspend an 8(a) application and refer the matter to the OIG for review. This final rule provides necessary discretion to SBA to allow SBA to determine when to refer a matter to the OIG.

In addition, SBA's regulations provide that each individual claiming economic disadvantage must describe such economic disadvantage in a narrative statement, and must submit personal financial information to SBA. SBA believes that the written narrative on economic disadvantage is an unnecessary burden imposed on applicants to the 8(a) BD program. SBA's determination as to whether an individual qualifies as economically disadvantaged is based solely on an analysis of objective financial data relating to the individual's net worth, income and total assets. As such, this final rule eliminates the requirement that each individual claiming economic disadvantage must submit a narrative statement in support of his or her claim of economic disadvantage.

Substantial Unfair Competitive Advantage Within an Industry Category (13 CFR 124.109, 124.110, and 124.111)

Pursuant to section 7(j)(10)(J)(ii)(II) of the Small Business Act, 15 U.S.C. 636(j)(10)(J)(ii)(II), "[i]n determining the size of a small business concern owned by a socially and economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe) [for purposes of 8(a) BD program entry and 8(a) BD contract award], each firm's size shall be independently determined without regard to its affiliation with the tribe, any entity of the tribal government, or any other business enterprise owned by the tribe, unless the Administrator determines that one or more such tribally owned business concerns have obtained, or are likely to obtain, a substantial unfair competitive advantage within an industry category." For purposes of the 8(a) BD program, the term "Indian tribe" includes any Alaska Native village or regional or village corporation (within the meaning of the Alaska Native Claims Settlement Act). 15 U.S.C. 637(a)(13). SBA's regulations have extended this broad exclusion from affiliation to the other entity-owned firms authorized to participate in the 8(a) BD program (*i.e.*, firms owned by Native Hawaiian Organizations (NHOs) and Community Development Corporations (CDCs)). *See* §§ 124.109(a), 124.109(c)(2)(iii), 124.110(b), and 124.111(c). The proposed rule attempted to provide guidance as to how SBA will determine whether a firm has obtained or is likely to obtain "a substantial unfair competitive advantage within an industry category."

SBA received a significant number of comments supporting the clarifying language of the proposed rule. Commenters agreed that the term "industry category" should be defined by six digit NAICS code, as that application would be consistent with other similar terms in SBA's regulations. They also agreed that an industry category should be looked at nationally since size standards are established on a national basis. Thus, the final rule provides that an entity-owned business concern is not subject to the broad exemption to affiliation set forth in 13 CFR part 124 where one or more entity-owned firms are found to have obtained, or are likely to obtain, a substantial unfair competitive advantage on a national basis in a particular NAICS code with a particular size standard.

In making this assessment, SBA will consider a firm's percentage share of the national market and other relevant factors to determine whether a firm is dominant in a specific six-digit NAICS code with a particular size standard. SBA will review Federal Procurement Data System (FPDS) data to compare the firm's share of the industry as compared to overall small business participation in that industry to determine whether there is an unfair competitive advantage. The rule does not contemplate a finding of affiliation where an entity-owned concern appears to have obtained an unfair competitive advantage in a local market, but remains competitive, but not dominant, on a national basis.

Management of Tribally-Owned 8(a) Program Participants (13 CFR 124.109)

The proposed rule sought to add language to § 124.109(c)(4) specifying that the individuals responsible for the management and daily operations of a tribally-owned concern cannot manage more than two Program Participants at the same time. This language is taken directly from section 7(j)(11)(B)(iii)(II) of the Small Business Act (15 U.S.C. 636(j)(11)(B)(iii)(II)), but does not currently appear in SBA's 8(a) BD regulations. The proposed rule provided that SBA believes it is necessary to incorporate this provision into the regulations to more fully apprise tribally-owned 8(a) applicants and Participants of the control requirements applicable to them. Those commenting on this provision understood the change and supported it. Thus, this final rule adopts the proposed language.

Native Hawaiian Organizations (NHOs) (13 CFR 124.110)

The proposed rule also sought to add language to § 124.110(d) to clarify that the members or directors of an NHO need not have the technical expertise or possess a required license to be found to control an applicant or Participant owned by the NHO. Rather, the NHO, through its members and directors, must merely have managerial experience of the extent and complexity needed to run the concern. As with individually owned 8(a) applicants and Participants, individual NHO members may be required to demonstrate more specific industry-related experience in appropriate circumstances to ensure that the NHO in fact controls the day-to-day operations of the firm. This is particularly true where a non-disadvantaged owner (or former owner) who has experience related to the industry is actively involved in the day-to-day management of the firm. Commenters supported this change as a needed clarification to the control requirements for NHOs. They believed that this change will allow NHOs with significant management experience to participate in and branch out into diverse industries, and that such a change will have a positive effect on the Native Hawaiian community. The final rule adopts the language as proposed.

The Small Business Act authorizes small business concerns owned by "economically disadvantaged" NHOs to participate in the 8(a) BD program. 15 U.S.C. 637(a)(4)(A)(i)(III). Neither the statute nor its legislative history provides any guidance on how to determine whether an NHO is economically disadvantaged. Currently, § 124.110(c)(1) provides that in determining whether an NHO is economically disadvantaged, SBA will look at the individual economic status of the NHO's members. The NHO must establish that a majority of its members qualify as economically disadvantaged under the rules that apply to individuals as set forth in § 124.104. The proposed rule solicited comments as to whether this is the most sensible approach to establishing economic disadvantage for NHOs.

SBA received a significant number of comments from the Native Hawaiian community on this issue, including several commenters who appeared at one or more of the tribal consultations. These commenters recommended that NHOs should establish economic disadvantage in the same way that tribes currently do for the 8(a) BD program: that is, by providing information relating to members, including the tribal unemployment rate, the per capita income of tribal members, and the percentage of tribal members below the poverty level. For the Native Hawaiian community, this would mean that an NHO would have to describe the individuals to be served by the NHO and provide the economic data regarding those individuals. SBA agrees that basing the economic disadvantage status of an NHO on individual Native Hawaiians who control the NHO does not seem to be the most appropriate way to do so. The Small Business Act defines the term "Native Hawaiian Organization" to mean "any community service organization serving Native Hawaiians in the State of Hawaii which (A) is a nonprofit corporation . . ., (B) is controlled by Native Hawaiians, and (C) whose business activities will principally benefit such Native Hawaiians." 15 U.S.C. 637(a)(15). The crucial point is that an NHO must be a community service organization that benefits Native Hawaiians. It is certainly understood that an NHO must serve economically disadvantaged Native Hawaiians, but nowhere is there any hint that economically disadvantaged Native Hawaiians must control the NHO. The statutory language merely requires that an NHO must be controlled by Native Hawaiians. In order to maximize benefits to the Native Hawaiian community, SBA believes that it makes sense that an NHO should be able to attract the most qualified Native Hawaiians to run and control the NHO. If the most qualified Native Hawaiians cannot be part of the team that controls an NHO because they may not qualify individually as economically disadvantaged, SBA believes that is a disservice to the Native Hawaiian community. As such, this final rule changes the way that SBA will determine whether an NHO qualifies as economically disadvantaged. It makes NHOs similar to Indian tribes by requiring an NHO to present information relating to the economic disadvantaged status of Native Hawaiians, including the unemployment rate of Native Hawaiians and the per capita income of Native Hawaiians. The difference between tribes and NHOs, however, is that one tribe serves and intends to benefit one distinct group of people (*i.e.,* its specific tribal members), and multiple NHOs may be established to serve and benefit the same group of people (*i.e.,* the entire Native Hawaiian community). As with economic disadvantage for tribes, once an NHO establishes that it is economically disadvantaged in connection with the application of one firm owned and controlled by the NHO because the intended beneficiaries are economically disadvantaged, it need not reestablish its economic disadvantage for another firm owned by the NHO. In addition, unless a second NHO intends to serve and benefit a different population than that of the first NHO that established its economic disadvantage status, the second NHO also need not submit information to establish its economic disadvantage. Of course, in any case, the AA/BD may request an NHO to reestablish/establish its economic disadvantage status where the AA/BD believes that circumstances of the Native Hawaiian community may have changed.

Sole Source 8(a) Awards

Pursuant to § 8(a)(1)(D) of the Small Business Act, 8(a) procurements that exceed $7.0 million for those assigned a manufacturing NAICS code and $4.0 million for all others must generally be competed among eligible 8(a) Program Participants. 15 U.S.C. 637(a)(1)(D). However, pursuant to section 303 of the Business Opportunity Reform Act of 1988 (Pub. L. 100–656), 102 Stat. 3853, 3887–3888, 8(a) Program Participants owned by Indian tribes and Alaska Native Corporations (ANCs) are exempt from those competitive threshold limitations. As such, a Participant owned by an Indian tribe or ANC can receive an 8(a) sole source award in any amount under the Small Business Act. Section 811 of the National Defense Authorization Act for Fiscal Year 2010 (NDAA 2010) (Section 811), Public Law 111–84, imposed justification and approval requirements on any 8(a) sole source contract that exceeds $20 million. 123 Stat. 2190, 2405. Specifically, section 811 provides that the head of an agency may not award a sole source 8(a) contract for an amount exceeding $20 million "unless the contracting officer for the contract justifies the use of a sole-source contract in writing" and "the justification is approved by the appropriate official designated to approve contract awards for dollar amounts that are comparable to the amount of the sole-source contract. . ." *Id.* This provision has been implemented in FAR 19.808–1(a) and 6.303–1(b), which currently provide that SBA cannot accept for negotiation a sole-source 8(a) contract that exceeds $22 million unless the requesting agency has completed a justification in accordance with the requirements of FAR 6.303. The FAR recently increased the $20 million amount to $22 million in order to take into account inflation. Several commenters to the proposed rule noted that SBA's regulations do not take into account section 811 or FAR 19.808–1, and requested that SBA amend its regulations to be consistent with the FAR. This final rule merely incorporates the section 811 and FAR requirements into SBA's regulations. In addition, it requires a procuring agency that is offering a sole source requirement that exceeds $22 million for award through the 8(a) BD to provide a statement in its offering letter that the necessary justification and approval under the FAR has occurred. SBA will not question and does not need to obtain a copy of the justification and approval, but merely ensure that it has been done.

SBA believes that there is some confusion in the 8(a) and procurement communities regarding the requirements of section 811. There is a misconception by some that there can be no 8(a) sole source awards that exceed $22 million. That is not true. Nothing in either section 811 or the FAR prohibits 8(a) sole source awards to Program Participants owned by Indian tribes and ANCs above $22 million. All that is required is that a contracting officer justify the award and have that justification approved at the proper level. In addition, there is no statutory or regulatory requirement that would support prohibiting 8(a) sole source awards above any specific dollar amount, higher or lower than $22 million.

As noted above, 8(a) procurements that exceed $7.0 million for those assigned a manufacturing NAICS code and $4.0 million for all others must generally be competed among eligible 8(a) Program Participants. This final rule also amends § 124.506(a)(2)(ii) regarding the competitive threshold amounts to make it consistent with the inflationary adjustment made to the FAR. As such, the final rule replaces the outdated $6.5 million competitive threshold for procurements assigned a manufacturing NAICS, and replaces it with the $7.0 million competitive threshold currently contained in § 19.805–1(a)(2) of the FAR.

Change in Primary Industry Classification (13 CFR 124.112)

The proposed rule sought to authorize SBA to change the primary industry classification contained in a Participant's business plan where the greatest portion of the Participant's total revenues during a three-year period have evolved from one NAICS code to another. It also provided discretion to SBA in deciding whether to change a Participant's primary industry classification because SBA recognized that whether the greatest portion of a firm's revenues is derived from one NAICS code, as opposed to one or more other NAICS codes, is a snapshot in time that is ever changing. The rule also proposed to require SBA to notify the Participant of its intent to change the Participant's primary industry classification and afford the Participant the opportunity to submit information explaining why such a change would be inappropriate. Although the language of the proposed rule specifically authorized the opportunity for a Participant to dispute any intent to change its primary NAICS code, the supplementary information to the proposed rule also requested comments as to whether an alternative that would permit SBA to change a Participant's primary industry automatically, based on FPDS data, should be considered instead.

SBA received a vast number of comments on this particular provision, both as formal written comments and as part of the various tribal consultations. In fact, this was the most heavily commented on provision of the proposed rule. Commenters focused on the alternative to allow SBA to change a Participant's primary industry unilaterally and strenuously opposed that alternative. Commenters presented many reasons why they opposed any automatic change in Participants' primary industry category. They felt that it would inappropriately impose a significant change on a firm based on inherently incomplete date in FPDS, which does not take all revenue streams into consideration. Commenters also noted that firms are not limited to pursuing work only in their primary NAICS code, and naturally pursue work in multiple NAICS codes. They believed that it would be contrary to the business development purposes of the program to discourage firms from branching out into several related industry categories. In addition, commenters noted that the work to be performed for a particular requirement may often be classified under more than one NAICS code. Commenters argued that if there are several reasonable NAICS codes that could be assigned to a requirement and a procuring agency selects one code (that happens to be a Participant's secondary NAICS code) instead of another (which is the Participant's primary NAICS code), the Participant should not be penalized for not performing work in its identified primary NAICS code. Commenters also felt that a unilateral change by SBA would deny a Participant due process rights and argued that there definitely should be dialogue between SBA and the Participant before any change is made to the Participant's primary NAICS code. Finally, although several commenters supported SBA's belief that it needed the ability to change a Participant's primary NAICS code in appropriate circumstances, a few different commenters opposed any change to a Participant's primary NAICS code.

SBA continues to believe that it should have the ability to change a Participant's primary NAICS code in appropriate circumstances. Because an entity-owned applicant need not have a track record of past performance to be eligible to participate in the 8(a) BD program (*i.e.,* it can meet the potential for success requirement simply by having the entity make a firm written commitment to support the operations of the applicant), the applicant has wide latitude in selecting its primary NAICS code. If the applicant selects a primary NAICS code merely to avoid the primary NAICS code of another Participant owned by the entity and has no intention of doing any work in that NAICS code, SBA believes that it should be able to change that Participant's primary NAICS code. Without such ability, there would be no requirement that the newly admitted Participant actually perform most, or any, work in the six digit NAICS code selected as its primary business classification in its application after being certified to participate in the 8(a) BD program. A firm could circumvent the intent of SBA's regulations by selecting a primary business classification that is different from the primary business classification of any other Participant owned by that same entity merely to get admitted to the 8(a) BD program, and then perform the majority, or even all, of its work in the identical primary NAICS code as another Participant owned by the entity. That should not be permitted to occur. However, SBA agrees with the commenters that SBA should not change a Participant's primary NAICS code without discussion back and forth between SBA and the Participant. SBA merely wants to ensure that the Participant has made and will continue to make good faith efforts to receive contracts (either Federal or non-Federal) in the NAICS code it identified as its primary NAICS code. For example, where a Participant details contract opportunities under its primary NAICS code that it submitted offers for in the last year, but was not successful in winning, and its concrete plans to continue to seek additional opportunities in that NAICS code, SBA would not change the Participant's primary industry classification. SBA understands the cyclical nature of business and that different factors may affect what type of contract opportunities are available. SBA does not expect a Participant to do no business when there is a downward turn in the industry identified as its primary NAICS code. Where SBA believes that a Participant's revenues for a secondary NAICS code exceed those of its identified primary NAICS code over the Participant's last three completed fiscal years, SBA would notify the Participant of its belief and ask the firm for input as to what its primary NAICS code is.

At that point, SBA would be looking for a reasonable explanation as to why the identified primary NAICS code should remain as the Participant's primary NAICS code. The Participant should identify: all non-Federal work that it has performed in its primary NAICS code; any efforts it has made to obtain contracts in the primary NAICS code; all contracts that it was awarded that it believes could have been classified under its primary NAICS code, but which a contracting officer assigned another reasonable NAICS code; and any other information that it believes has a bearing on why its primary NAICS code should not be changed despite performing more work in another NAICS code.

The proposed rule also provided that if SBA determined that a change in a Participant's primary NAICS code was appropriate and that Participant was an entity-owned firm that could not have two Participants in the program with the same primary NAICS code, the entity (tribe, ANC, NHO, or CDC) would be required to choose which Participant should leave the 8(a) BD program if the change in NAICS codes caused it to have two Participants with the same primary NAICS code. Several commenters opposed requiring an entity to terminate the continued participation of one of its 8(a) BD Participants where it would have two Participants having the same primary NAICS code after SBA changes the primary NAICS of one of the firms. Instead, these commenters recommended that the second, newer firm be permitted to continue to participate in the 8(a) BD program, but not be permitted to receive any additional 8(a) contracts in the six-digit NAICS code that is the primary NAICS code of the other 8(a) Participant. SBA agrees that that would be a more suitable approach. The second firm is the one that should not have been able to have been admitted to the 8(a) BD program to perform most of its work in a NAICS code that was the primary NAICS code of another Participant owned by the same entity. Allowing the entity to choose to end the participation of the first firm, which may already be near the end of its program term, while allowing the second firm to continue to receive 8(a) contracts in a primary NAICS code that it never should have had would not appear to be much of a deterrent to others to continue this practice, and would not in any way penalize the second Participant that made no reasonable attempt to perform work in the NAICS code that it identified as its primary NAICS code to SBA. Thus, SBA adopts the recommendation and incorporates it into this final rule.

8(a) BD Program Suspensions (13 CFR 124.305)

SBA proposed to add two additional bases for allowing a Participant to elect to be suspended from 8(a) BD program participation: Where the Participant's principal office is located in an area declared a major disaster area or where there is a lapse in Federal appropriations. The changes were intended to allow a firm to suspend its term of participation in the 8(a) BD program in order to not miss out on contract opportunities that the firm might otherwise have lost due to a disaster or a lapse in Federal funding.

SBA received only comments in support of these two new bases to allow a Participant to elect suspension from 8(a) BD program participation. As such, the final rule adopts the language contained in the proposed rule. Upon the request of a certified 8(a) firm in a major declared disaster area, SBA will be able to suspend the eligibility of the firm for up to a one year period while the firm recovers from the disaster to ensure that it is able to take full advantage of the 8(a) BD program, rather than being impacted by lack of capacity or contracting opportunities due to disaster-induced disruptions. During such a suspension, a Participant would not be eligible for 8(a) BD program benefits, including set-asides, however, but would not "lose time" in its program term due to the extenuating circumstances wrought by a disaster. Similarly, this rule will allow a Participant to elect to suspend its participation in the 8(a) BD program where: Federal appropriations for one or more Federal departments or agencies have expired without being extended via continuing resolution or other means and no new appropriations have been enacted (*i.e.,* during a lapse in appropriations); SBA has previously accepted an offer for a sole source 8(a) award on behalf of the Participant; and award of the 8(a) sole source contract is pending. A Participant could not elect a partial suspension of 8(a) BD program benefits. If it elects to be suspended during a lapse in Federal appropriations, the Participant would be ineligible to receive any new 8(a) BD program benefits during the suspension.

Benefits Reporting Requirement (13 CFR 124.602)

The proposed rule included an amendment to the time frame for the reporting of benefits for entity-owned Participants in the 8(a) BD program. Previously, SBA required an entity-owned Participant to report benefits as part of its annual review submission. SBA believes it is more appropriate that this information be submitted as part of a Participant's submission of its annual financial statements pursuant to § 124.602. SBA wants to make clear that benefits reporting should not be tied to continued eligibility, as may be assumed where such reporting is part of SBA's annual review analysis. The proposed rule changed the timing of benefits reporting from the time of a Participant's annual review submission to the time of a Participant's annual financial statement submission. SBA believes that the data collected by certain Participants in preparing their financial statements submissions may also help them report some of the benefits that flow to the native or other community. The regulatory change will continue to require the submission of the data on an annual basis but within 120 days after the close of the concern's fiscal year instead of as part of the annual submission.

Commenters supported this change, believing that it was important to remove any doubt that benefits reporting should not in any way be tied to continued eligibility. Although a few commenters opposed the reporting of benefits flowing back to the native or other community entirely, most commenters understood that this requirement was generated in response to a GAO audit and was intended to support the continued need for the tribal 8(a) program. The final rule adopts the proposed language.

Reverse Auctions (13 CFR 125.2 and 125.5)

SBA also proposed to amend §§ 125.2(a) and 125.5(a)(1) to address reverse auctions. Specifically, SBA proposed to reinforce the principle that all of SBA's regulations, including those relating to set-asides and referrals for a Certificate of Competency, apply to reverse auctions. With a reverse auction, the Government is buying a product or service, but the businesses are bidding against each other, which tends to drive the price down (hence the name reverse auction). In a reverse auction, the bidders actually get to see all of the other bidders' prices and can "outbid" them by offering a lower price. Although SBA believes that the small business rules currently apply to reverse auctions, the proposed rule intended to make it clear to contracting officials that there are no exceptions to SBA's small business regulations for reverse auctions. SBA received no adverse comments in response to this provision.

As such, the final rule makes no changes from the proposed rule.

Reconsideration of Decisions of SBA's OHA (13 CFR 134.227)

The proposed rule added clarifying language to § 134.227(c) to recognize SBA as a party that may file a request for reconsideration in an OHA proceeding in which it has not previously participated. The final rule adopts the language as proposed. This provision is intended to alter the rule expressed in *Size Appeal of Goel Services, Inc. and Grunley/Goel JVD LLC,* SBA No. SIZ–5356 (2012), which held that SBA could not request reconsideration where SBA did not appear as a party in the original appeal. The SBA believes that it is axiomatic that SBA is always an interested party regarding an appeal of an SBA decision to OHA, and that SBA may request reconsideration of an OHA appeal decision even where SBA chose not to or otherwise did not file a response to the initial appeal petition.

Compliance With Executive Orders 12866, 13563, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is a significant regulatory action for purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. This is not a major rule, however, under the Congressional Review Act.

Regulatory Impact Analysis

1. *Is there a need for the regulatory action?*

The final rule implements section 1347(b)(3) of the Small Business Jobs Act of 2010, Public Law 111–240, 124 Stat. 2504, which authorizes the Agency to establish mentor-protégé programs for SDVO SBCs, HUBZone SBCs, and WOSB concerns, modeled on the Agency's mentor-protégé program for small business concerns participating in programs under section 8(a) of the Small Business Act (15 U.S.C. 637(a)). In addition, the final rule implements section 1641 of the NDAA 2013, Public Law 112–239, which authorized SBA to establish a mentor-protégé program for all small business concerns. SBA is also updating its rules to clarify areas where small business concerns may have been confused or where OHA's interpretations of SBA rules do not conform to SBA's interpretation or intent.

2. *What are the alternatives to this rule?*

As noted above in the supplementary information, this rule seeks to implement the Jobs Act of 2010 and NDAA 2013 authorities by creating one new mentor-protégé program in which any small business could participate instead of implementing four new separate small business mentor-protégé programs (*i.e.,* having a separate mentor-protégé program for SDVO SBCs, HUBZone SBCs, WOSB concerns, and all other small business concerns, in addition to the current mentor-protégé program for 8(a) BD Participants). SBA decided to implement one program for all small businesses because SBA believed it would be easier for the small business and acquisition communities to use and understand. The statutory authority for this rule specifically mandates that the new mentor-protégé programs be modeled on the existing mentor-protégé program for small business concerns participating in the 8(a) BD program. Thus, to the extent practicable, SBA has attempted to adopt the regulations governing the 8(a) mentor-protégé program in establishing the mentor-protégé program for SBCs.

3. *What are the potential benefits and costs of this regulatory action?*

The final rule enhances the ability of small business concerns to obtain larger prime contracts that would be normally out of the reach of these businesses. The small business mentor-protégé program should allow all small businesses to tap into the expertise and capital of larger firms, which in turn should help small business concerns become more knowledgeable, stable, and competitive in the Federal procurement arena.

SBA estimates that under the final rule, approximately 2,000 SBCs, will become active in the small business mentor-protégé program, and protégé firms may obtain Federal contracts totaling possibly $2 billion per year. SBA notes that these estimates represent an extrapolation from data on the percentage of 8(a) BD Program Participants with signed MPAs and joint venture agreements, and are based on the dollars awarded to SBCs in FY 2012 according to data retrieved from the Federal Procurement Data System—Next Generation (FPDS–NG). With SBCs able to compete for larger contracts and thus a greater number of contracts in general, Federal agencies may choose to set aside more contracts for competition among small businesses, SDVO SBCs, HUBZone SBCs, and WOSB concerns, rather than using full and open competition. The movement from unrestricted to set-aside contracting might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers. The added competition for many of these procurements could result in lower prices to the Government for procurements reserved for SBCs, HUBZone SBCs, WOSB concerns, and SDVO SBCs, although SBA cannot quantify this benefit. To the extent that more than two thousand SBCs could become active in the small business mentor-protégé program, this might entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement opportunities.

The small business mentor-protégé program may have some distributional effects among large and small businesses. Although SBA cannot estimate with certainty the actual outcome of the gains and losses among small and large businesses, it can identify several probable impacts. There may be a transfer of some Federal contracts from large businesses to SBC protégés. However, large business mentors will be able to joint venture with protégé firms for contracts reserved for small business and be eligible to perform contracts that they would otherwise be ineligible to perform. Large businesses may have fewer Federal prime contract opportunities as Federal agencies decide to set aside more Federal contracts for SBCs, SDVO SBCs, HUBZone SBCs, and WOSB concerns. In addition, some Federal contracts may be awarded to HUBZone protégés instead of large businesses since these firms may be eligible for an evaluation adjustment for contracts when they compete on a full and open basis. This transfer may be offset by a greater number of contracts being set aside for SBCs, SDVO SBCs, HUBZone SBCs, and WOSB concerns. SBA cannot estimate the potential distributional impacts of these transfers with any degree of precision.

The small business mentor-protégé program is consistent with SBA's statutory mandate to assist small businesses, and this regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses, including SDVO SBCs, HUBZone SBCs, and WOSB concerns, succeed through fair and equitable access to capital and credit, Federal contracts, and management and technical assistance.

Executive Order 13563

A description of the need for this regulatory action and the benefits and costs associated with this action, including possible distributional impacts that relate to Executive Order 13563, is included above in the Regulatory Impact Analysis.

Executive Order 12866

In an effort to engage interested parties in this action, SBA met with representatives from various agencies to obtain their feedback on SBA's proposed mentor-protégé program. For example, SBA participated in a Government-wide meeting involving Office of Small and Disadvantaged Business Utilization (OSDBU) representatives responsible for mentor-protégé programs in their respective agencies. It was generally agreed upon that SBA's proposed mentor-protégé program would complement the already existing Federal programs due in part to the differing incentives offered to the mentors under the various programs. SBA also presented proposed small business mentor-protégé programs to businesses in thirteen cities in the U.S. and sought their input as part of the Jobs Act tours. In developing the proposed rule, SBA considered all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies.

Finally, SBA also conducted a series of tribal consultations pursuant to Executive Order 13175, Tribal Consultations. SBA conducted three in-person tribal consultations (in Washington, DC on February 26, 2015, in Tulsa, Oklahoma on April 21, 2015, and in Anchorage, Alaska on April 23, 2015) and two telephonic tribal consultations (one on April 7, 2015, and a Hawaii/Native Hawaiian Organization specific one on April 8, 2015). These consultations highlighted those issues specifically relevant to the tribal, ANC, and NHO communities, but also solicited comments regarding all of the provisions of the proposed rule. SBA considered the statements and recommendations received during the consultation process in finalizing this rule.

Executive Order 12988

For purposes of Executive Order 12988, SBA has drafted this final rule, to the extent practicable, in accordance with the standards set forth in sections 3(a) and 3(b)(2) of that Executive Order, to minimize litigation, eliminate ambiguity, and reduce burden. This rule has no preemptive or retroactive effect.

Executive Order 13132

For the purpose of Executive Order 13132, SBA has determined that this final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, SBA has determined that this final rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act

For purposes of the Paperwork Reduction Act, 44 U.S.C. Chapter 35, SBA has determined that this final rule would impose new reporting requirements. These collections of information include the following: (1) Information necessary for SBA to evaluate the success of a mentor-protégé relationship; (2) information necessary for SBA to determine whether a prospective mentor is capable of carrying out its responsibilities to assist the protégé firm under the proposed mentor-protégé agreement; (3) information necessary for SBA to evaluate compliance with performance of work requirements, including work performed by the joint venture; and (4) information detailing the proposed relationship between the mentor and protégé. The rule also eliminates the collection of information currently contained in SBA's regulations. Specifically, the final rule eliminates the requirement that each individual claiming economic disadvantage for purposes of 8(a) eligibility must submit a narrative statement in support of his or her claim of economic disadvantage. SBA eliminated this requirement because SBA believes it to be burdensome and unnecessary.

Finally, the final rule also makes a minor change to the benefits reporting schedule from the time of an 8(a) Participant's annual review submission to when the Participant submits its financial statement as required by § 124.602; specifically, within 120 days after the close of the Participant's fiscal year. The 8(a) Participants Benefits Report form has been approved by OMB (OMB Control No. 3245–0391). This rule makes no substantive changes to the benefits information to be reported to SBA, it merely adjusts the reporting date. The title, summary of each information collection, description of respondents, and an estimate of the reporting burden are discussed below. Included in the estimate is the time for reviewing instructions, searching existing data needed, and completing and reviewing each collection of information.

SBA solicited public comments on these collections of information at the proposed rule stage. Except as discussed below, there was very little feedback on these changes. SBA will submit the final information collections to OMB for approval.

1. *Title and Description:* Mentor-Protégé Agreement [SBA Form 2459]. The agreement between a mentor and protégé will include an assessment of the protégé's needs and goals; a description of the how the mentor intends to assist protégé in meeting its goals; and the timeline for delivery of such assistance.

Need and Purpose: The agreement must be submitted to SBA for review and approval, to help the Agency to determine whether the proposed assistance will enhance the development of the protégé and not merely further the interest of the mentor. The information will also be beneficial to SBA's efforts to reduce fraud, waste, and abuse in Federal contracting programs.

OMB Control Number: New Collection.

Description and Estimated Number of Respondents: This information will be collected from small business protégés pursuant to § 125.9(e). SBA estimates this number to be 2,000.

Estimated Response Time: 1 hour.

Total Estimated Annual Hour Burden: 2,000.

Overall, commenters agreed that the collection of information identified in the proposed rule is necessary for the proper performance of SBA's functions, and would not be overly burdensome for affected business concerns.

2. *Title and Description:* Mentor-Protégé Financial and Other Information. [Form number not applicable] The final rule requires concerns seeking to participate in the small business mentor-protégé program to submit certain financial information to SBA, including copies of Federal tax returns or audited financial statements, if applicable, filings required by the Securities and Exchange Commission, as well as payroll records.

Need and Purpose: The information requested is necessary for SBA to determine whether prospective mentors are in good financial condition and capable of meeting their obligations under the mentor–protégé agreement to provide assistance to protégés and enhance their ability to successfully compete for Federal contracts. SBA will use the information to help determine whether the mentor can meet its obligations to provide business development assistance under the mentor-protégé agreement, and also whether the protégé is an appropriate participant in the program. This information is to be submitted along with the mentor-protégé agreement as part of the program approval process. SBA believes that any additional burden imposed by this requirement would be minimal since the firms maintain the information in their general course of business.

OMB Control Number: New Collection.

Description of and Estimated Number of Respondents: Pursuant to § 125.9(b)(2), this information will be collected from concerns seeking to benefit as mentors from SBA's mentor-protégé programs under § 125.9. SBA estimates this number to be between 1500 and 2000, since SBA has estimated the number of protégés to be 2,000.

Estimated Response Time: 1 hour.

Total Estimated Annual Hour Burden: 1,500–2,000.

3. *Title and Description:* Mentor-Protégé Benefits Report [SBA Form number 2460]. Protégés participating in the small business mentor-protégé program are required to submit to SBA annual reports on their mentor-protégé relationships. The information to be included in these annual reports is the same type of information that is currently required of protégés participating in SBA's 8(a) Business Development program, and as such will be modeled on the mentor-protégé annual reporting requirements in Attachment B of SBA Form 1450 (OMB Control Number 3245–0205). Such information includes identification of the technical, management and/or financial assistance provided by mentors to protégés; and a description of how that assistance has impacted the development of the protégés. Once a mentor-protégé relationship ends, the protégé must submit a close out report to SBA on whether the protégé believed the mentor-protégé relationship was beneficial and describe any lasting benefits it received.

Need and Purpose: This information collection is necessary for SBA to, among other things, evaluate whether and to what extent the protégés are benefiting or have benefitted from the relationship and in general, the effectiveness of the program in meeting its objectives. The information will also help SBA to determine whether to approve the continuation of the mentor-protégé agreement, approve a second mentor-protégé agreement with the same parties, or take other actions as necessary to protect against fraud, waste, or abuse in SBA's mentor-protégé programs.

OMB Control Number: New Collection.

Description of and Estimated Number of Respondents: This information will be collected from small business protégés pursuant to proposed § 125.9(g). SBA estimates this number to be 2,000.

Estimated Response Time: 2 hours.

Total Estimated Annual Hour Burden: 4,000

4. *Title and Description:* Joint venture agreement. [Form number not applicable] The final rule requires participants to enter into a joint venture agreement that contains certain required provisions, pertaining to ownership, profits, bank accounts, itemization of equipment and specification of responsibilities. Commenters recommended that no specific format should be required for this agreement; therefore no specific format is mandated. However, the agreement must include the information outlined in § 125.8; § 125.18 ; § 126.616; and § 127.506.

Need and Purpose: This information collection is necessary to ensure that joint venture agreements contain the provisions and information required by regulation, including ownership, distribution of profits, bank accounts, itemization of equipment, and specification of responsibilities.

OMB Control Number: New Collection.

Description and Estimated Number of Respondents: This information will be collected from SBC, SDVO SBC, HUBZone SBC, and WOSB joint venture partners SBA estimates this number to be between 1,500 and 2,000.

Estimated Response Time: 1 hour.

Total Estimated Annual Hour Burden: 1,500–2,000

5. *Title and Description:* Joint venture performance of work report [Form number not applicable]. The final rule imposes a requirement on SBC joint venture partners to annually submit to the applicable contracting officers and SBA performance of work reports demonstrating their how they are meeting or have met (for completed contracts), the applicable performance of work requirements for each SDVO, HUBZone, WOSB or small business set-aside contract they perform as a joint venture. Commenters recommended that no specific format should be required by which the information should be transmitted to SBA. Thus, SBA will permit any format that is easiest for the joint venture partners.

Need and Purpose: This requirement will greatly enhance SBA's ability to monitor compliance with the limitations on subcontracting requirements in its effort to reduce fraud, waste, and abuse. SBA believes that any additional burden imposed by this recordkeeping requirement would be minimal because firms are already required to track their compliance with these requirements.

OMB Control Number: New Collection.

Description and Estimated Number of Respondents: This information will be collected from SBC, SDVO SBC, HUBZone SBC, and WOSB joint venture partners under § 125.8(i), § 125.18(b), § 126.616(i), and § 127.506(j). SBA estimates this number to be between 1,500 and 2,000.

Estimated Response Time: 1 hour.

Total Estimated Annual Hour Burden: 1,500–2,000.

Regulatory Flexibility Act 5 U.S.C., 601–612

Under the Regulatory Flexibility Act (RFA), this final rule may have a significant impact on a substantial number of small businesses. Immediately below, SBA sets forth a final regulatory flexibility analysis (FRFA) addressing the impact of this final rule in accordance with section 604, Title 5, of the United States Code. The FRFA examines the need and objectives for this final rule; the significant issues raised by public comment and SBA's responses thereto; kind and number of small entities that may be affected; the projected recordkeeping, reporting, and other requirements; and a description of the steps SBA has taken to minimize the significant economic impact on small entities.

1. *What are the need for and objective of the rule?*

This final rule implements section 1347(b)(3) of the Small Business Jobs Act of 2010, Public Law 111–240, and section 1641 of the NDAA 2013, Public Law 112–239. As discussed above, the Small Business Jobs Act tasked the Agency with establishing mentor-protégé programs for SDVO SBCs, HUBZone SBCs, and WOSB concerns, modeled on the Agency's mentor-protégé program for small business concerns participating in programs under section 8(a) of the Small Business Act (13 U.S.C. 637(a)), commonly known as the 8(a) Business Development program. Similarly, section 1641 of NDAA 2013 authorized SBA to establish a mentor-protégé program for all small business concerns that is identical to the 8(a) BD mentor-protégé program, except that SBA may modify the program to the extent necessary given the types of small business concerns included as protégés. SBA chose to implement one small business mentor-protégé program, in addition to the 8(a) BD mentor-protégé program.

2. *What are the significant issues raised by the public comments, SBA's assessment of such issues, and any changes made in the proposed rule as a result of such comments?*

As noted above, SBA received 113 comments in response to the proposed rule, with most of the commenters commenting on multiple proposed provisions. A description of the comments received, SBA's response to such comments, and the changes made to the final rule in response to the comments is identified in detail in the supplementary information section of this final rule. The most heavily commented on provision of the proposed rule was the provision authorizing SBA to change the primary NAICS code of an 8(a) BD Program Participant in appropriate circumstances. SBA believed that many of the commenters misconstrued SBA's intent. SBA alleviated the concern that SBA would unilaterally change a firm's primary NAICS code without input from the firm by clarifying in the final rule that there will be a dialogue between SBA and the affected Participant before any NAICS code change is made, and that a change will not occur where the firm provides a reasonable explanation as to why the identified primary NAICS code should remain as the Participant's primary NAICS code.

SBA received a significant number of comments supporting a small business mentor-protégé program. These commenters believed that a small business mentor-protégé program would enable firms that are not in the 8(a) BD program to receive critical business development assistance that would otherwise not be available to them. Many of these commenters expressed support for the opportunity to gain meaningful expertise that would help them to independently perform more complex and higher value contracts in the future.

3. *What are SBA's description and estimate of the number of small entities to which the rule will apply?*

The final rule will apply to all small business concerns participating in the Federal procurement market that seek to form mentor-protégé relationships. SBA estimates this number to be about two thousand, based upon the number of 8(a) Participants that have established mentor-protégé relationships in that program.

4. *What are the projected reporting, recordkeeping, and other compliance requirements of the rule and an estimate of the classes of small entities which will be subject to the requirements?*

The final rule imposes the following reporting and recordkeeping requirements: (1) Information necessary for SBA to evaluate the success of a mentor-protégé relationship; (2) information necessary for SBA to determine whether a prospective mentor is meeting its obligations under its MPA; and (3) information necessary for SBA to evaluate compliance with performance of work requirements. SDVO SBC, HUBZone SBC, and WOSB joint venture partners would be required to submit to SBA performance of work reports demonstrating their compliance with the limitations on subcontracting requirements. SBA estimates this number to be approximately 2,000.

The Paperwork Reduction Act requirements are addressed further above.

5. *What steps has SBA taken to minimize the significant economic impact on small entities?*

Thirteen Federal agencies, including SBA, currently offer mentor-protégé programs aimed at assisting small businesses to gain the technical and business skills necessary to successfully compete in the Federal procurement market. While the mentor-protégé programs offered by other agencies share SBA's goal of increasing the participation of small businesses in Government contracts, the other Federal mentor-protégé programs are structured differently than SBA's proposed mentor-protégé programs, particularly in terms of the incentives offered to mentors. For example, some agencies offer additional points to a bidder who has a signed mentor-protégé agreement in place, while other agencies offer the benefit of reimbursing mentors for certain costs associated with protégés' business development. SBA, as the agency authorized to determine small business size status, is uniquely qualified to offer mentor-protégé program participants the distinctive benefit of an exclusion from affiliation. This incentive makes SBA's mentor-protégé programs particularly attractive to potential mentors. Having a larger and more robust mentor pool increases the likelihood that small business protégés will indeed obtain valuable business development assistance.

SBA decided to implement one new small business mentor-protégé program instead of four new mentor-protégé programs (one for small businesses, one for SDVO small businesses, one for WOSBs and one for HUBZone small businesses) since the other three types of small businesses (SDVO, HUBZone and women-owned) would be necessarily included within any mentor-protégé program targeting all small business concerns. Having one additional program instead of four additional programs will be easier for small business concerns to use and understand, and cause less of a burden on them.

In addition, where the benefits provided to a protégé firm are minimal or where it appears that the relationship has been used primarily to permit a large mentor to benefit from contracts with its approved protégé, through one or more joint ventures, that it would otherwise not be eligible for, SBA will terminate the mentor-protégé relationship. This will allow a small protégé firm to get out of a bad mentor-protégé relationship that may have a negative impact on its economic development and seek and enter a new mentor-protégé relationship that will prove to be more beneficial to the small protégé firm.

Throughout this final rule, SBA has attempted to minimize any costs to small business. SBA believes that the benefits to be gained through a productive mentor-protégé relationship will far outweigh any administrative costs associated with the mentor-protégé program. In addition, the provisions of the final rule attempt to impose safeguards that ensure that small businesses receive meaningful business development assistance, while at the same time ensuring that large businesses do not unduly benefit from small business contracts for which they would otherwise be ineligible to perform.

List of Subjects

13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Individuals with disabilities, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 124

Administrative practice and procedures, Government procurement, Hawaiian natives, Indians—business and finance, Minority businesses, Reporting and recordkeeping requirements, Tribally-owned concerns, Technical assistance.

13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance.

13 CFR Part 126

Administrative practice and procedure, Government procurement, Penalties, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 127

Government contracts, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 134

Administrative practice and procedure, Organization and functions (Government agencies).

For the reasons set forth in the preamble, SBA amends 13 CFR parts 121, 124, 125, 126, 127, and 134 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 662, and 694a(9).

■ 2. Amend § 121.103 by revising paragraphs (b)(2)(ii), (b)(6), the last two sentences of paragraph (h) introductory text, and paragraph (h)(3)(ii) to read as follows:

§ 121.103 How does SBA determine affiliation?

* * * * *

(b) * * *

(2) * * *

(ii) Business concerns owned and controlled by Indian Tribes, ANCs, NHOs, CDCs, or wholly-owned entities of Indian Tribes, ANCs, NHOs, or CDCs, are not considered to be affiliated with other concerns owned by these entities because of their common ownership or common management. In addition, affiliation will not be found based upon the performance of common administrative services so long as adequate payment is provided for those services. Affiliation may be found for other reasons.

(A) Common administrative services which are subject to the exception to affiliation include, bookkeeping, payroll, recruiting, other human resource support, cleaning services, and other duties which are otherwise unrelated to contract performance or management and can be reasonably pooled or otherwise performed by a holding company, parent entity, or sister business concern without interfering with the control of the subject firm.

(B) Contract administration services include both services that could be considered "common administrative services" under the exception to affiliation and those that could not.

(*1*) Contract administration services that encompass actual and direct day-to-day oversight and control of the performance of a contract/project are not shared common administrative services, and would include tasks or functions such as negotiating directly with the government agency regarding proposal terms, contract terms, scope and modifications, project scheduling, hiring and firing of employees, and overall responsibility for the day-to-day and overall project and contract completion.

(*2*) Contract administration services that are administrative in nature may constitute administrative services that can be shared, and would fall within the exception to affiliation. These administrative services include tasks such as record retention not related to a specific contract (*e.g.*, employee time and attendance records), maintenance of databases for awarded contracts, monitoring for regulatory compliance, template development, and assisting accounting with invoice preparation as needed.

(C) Business development may include both services that could be considered "common administrative services" under the exception to affiliation and those that could not. Efforts at the holding company or parent level to identify possible procurement opportunities for specific subsidiary companies may properly be considered "common administrative services" under the exception to affiliation. However, at some point the opportunity identified by the holding company's or parent entity's business development efforts becomes concrete enough to assign to a subsidiary and at that point the subsidiary must be involved in the business development efforts for such opportunity. At the proposal or bid preparation stage of business development, the appropriate subsidiary company for the opportunity has been identified and a representative of that company must be involved in preparing an appropriate offer. This does not mean to imply that one or more representatives of a holding company or parent entity cannot also be involved in preparing an offer. They may be involved in assisting with preparing the generic part of an offer, but the specific subsidiary that intends to ultimately perform the contract must control the technical and contract specific portions of preparing an offer. In addition, once award is made, employee assignments and the logistics for contract performance must be controlled by the specific subsidiary company and should not be performed at a holding company or parent entity level.

* * * * *

(6) A firm that has an SBA-approved mentor-protégé agreement authorized under § 124.520 or § 125.9 of this chapter is not affiliated with its mentor firm solely because the protégé firm receives assistance from the mentor under the agreement. Similarly, a protégé firm is not affiliated with its mentor solely because the protégé firm receives assistance from the mentor under a federal mentor-protégé program where an exception to affiliation is specifically authorized by statute or by SBA under the procedures set forth in § 121.903. Affiliation may be found in either case for other reasons as set forth in this section.

* * * * *

(h) * * * For purposes of this provision and in order to facilitate tracking of the number of contract awards made to a joint venture, a joint venture: must be in writing and must do business under its own name; must be identified as a joint venture in the System for Award Management (SAM); may be in the form of a formal or informal partnership or exist as a separate limited liability company or other separate legal entity; and, if it exists as a formal separate legal entity, may not be populated with individuals intended to perform contracts awarded to the joint venture (*i.e.*, the joint venture may have its own separate employees to perform administrative functions, but may not have its own separate employees to perform contracts awarded to the joint venture). SBA may also determine that the relationship between a prime contractor and its subcontractor is a joint venture, and that affiliation between the two exists, pursuant to paragraph (h)(5) of this section.

* * * * *

(3) * * *

(ii) Two firms approved by SBA to be a mentor and protégé under § 125.9 of this chapter may joint venture as a small business for any Federal government prime contract or subcontract, provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the procurement, and the joint venture meets the requirements of § 125.18(b)(2) and (3), § 126.616(c) and (d), or § 127.506(c) and (d) of this chapter, as appropriate.

* * * * *

■ 3. Amend § 121.404 by revising paragraph (g)(2)(ii)(A) to read as follows:

§ 121.404 When is the size status of a business concern determined?

* * * * *

(g) * * *

(2) * * *

(ii) * * *

(A) When a concern, or an affiliate of the concern, acquires or is acquired by another concern;

* * * * *

§ 121.406 [Amended]

■ 4. Amend § 121.406(b)(5) introductory text by removing the phrase "paragraph (b)(1)(iii)" and adding in its place the phrase "paragraph (b)(1)(iv)".

§ 121.702 [Amended]

■ 5. Amend § 121.702(a)(1)(i) by adding the words "an Indian tribe, ANC or NHO (or a wholly owned business entity of such tribe, ANC or NHO)," before the words "or any combination of these".

■ 6. Amend § 121.1001 by redesignating paragraph (b)(10) through (12) as paragraphs (b)(11) through (13), respectively, and by adding a new paragraph (b)(10) to read as follows:

§ 121.1001 Who may initiate a size protest or request a formal size determination?

* * * * *

(b) * * *

(10) For purposes of the small business mentor-protégé program authorized pursuant to § 125.9 of this chapter (based on its status as a small business for its primary or identified secondary NAICS code), the business concern seeking to be a protégé or SBA may request a formal size determination.

* * * * *

PART 124—8(A) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

■ 7. The authority citation for part 124 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d) and 644; Pub. L. 99–661; Pub. L. 100–656, sec. 1207; Pub. L. 101–37; Pub. L. 101–574, section 8021; Pub. L. 108–87; and 42 U.S.C. 9815.

■ 8. Amend § 124.103 as follows:

■ a. Add a sentence at the end of paragraph (c)(1);

■ b. Revise paragraph (c)(2)(ii);

■ c. Redesignate paragraph (c)(2)(iii) as (c)(2)(iv);

■ d. Add a new paragraph (c)(2)(iii);

■ e. Revise newly redesignated paragraph (c)(2)(iv) introductory text; and

■ f. Add paragraphs (c)(3) through (6).

The additions and revisions read as follows:

§ 124.103 Who is socially disadvantaged?

* * * * *

(c) * * *

(1) * * * Such individual should present corroborating evidence to support his or her claim(s) of social disadvantage where readily available.

(2) * * *

(ii) The individual's social disadvantage must be rooted in treatment which he or she has experienced in American society, not in other countries;

(iii) The individual's social disadvantage must be chronic and substantial, not fleeting or insignificant; and

(iv) The individual's social disadvantage must have negatively impacted on his or her entry into or advancement in the business world. SBA will consider any relevant evidence in assessing this element, including experiences relating to education, employment and business history (including experiences relating to both the applicant firm and any other previous firm owned and/or controlled by the individual), where applicable.

* * * * *

(3) An individual claiming social disadvantage must present facts and evidence that by themselves establish that the individual has suffered social disadvantage that has negatively impacted his or her entry into or advancement in the business world.

(i) Each instance of alleged discriminatory conduct must be accompanied by a negative impact on the individual's entry into or advancement in the business world in order for it to constitute an instance of social disadvantage.

(ii) SBA may disregard a claim of social disadvantage where a legitimate alternative ground for an adverse employment action or other perceived adverse action exists and the individual has not presented evidence that would render his/her claim any more likely than the alternative ground.

Example 1 to paragraph (c)(3)(ii). A woman who is not a member of a designated group attempts to establish her individual social disadvantage based on gender. She certifies that while working for company X, she received less compensation than her male counterpart. Without additional facts, that claim is insufficient to establish an incident of gender bias that could lead to a finding of social disadvantage. Without additional facts, it is no more likely that the individual claiming disadvantage was paid less than her male counterpart because he had superior qualifications or because he had greater responsibilities in his employment position. She must identify her qualifications (education, experience, years of employment, supervisory functions) as being equal or superior to that of her male counterpart in order for SBA to consider that particular incident may be the result of discriminatory conduct.

Example 2 to paragraph (c)(3)(ii). A woman who is not a member of a designated group attempts to establish her individual social disadvantage based on gender. She certifies that while working for company Y, she was not permitted to attend a professional development conference, even though male employees were allowed to attend similar conferences in the past. Without additional facts, that claim is insufficient to establish an incident of gender bias that could lead to a finding of social disadvantage. It is no more likely that she was not permitted to attend the conference based on gender bias than based on non-discriminatory reasons. She must identify that she was in the same professional position and level as the male employees who were permitted to attend similar conferences in the past, and she must identify that funding for training or professional development was available at the time she requested to attend the conference.

(iii) SBA may disregard a claim of social disadvantage where an individual presents evidence of discriminatory conduct, but fails to connect the discriminatory conduct to consequences that negatively impact his or her entry into or advancement in the business world.

Example to paragraph (c)(3)(iii). A woman who is not a member of a designated group attempts to establish her individual social disadvantage based on gender. She provides instances where one or more male business clients utter derogatory statements about her because she is a woman. After each instance, however, she acknowledges that the clients gave her contracts or otherwise continued to do business with her. Despite suffering discriminatory conduct, this individual has not established social disadvantage because the discriminatory conduct did not have an adverse effect on her business.

(4) SBA may request an applicant to provide additional facts to support his or her claim of social disadvantage to substantiate that a negative outcome was based on discriminatory conduct instead of one or more legitimate non-discriminatory reasons.

(5) SBA will discount or disbelieve statements made by an individual seeking to establish his or her individual social disadvantage where such statements are inconsistent with other evidence contained in the record.

(6) In determining whether an individual claiming social disadvantage meets the requirements set forth in this paragraph (c), SBA will determine whether:

(i) Each specific claim establishes an incident of bias or discriminatory conduct;

(ii) Each incident of bias or discriminatory conduct negatively impacted the individual's entry into or advancement in the business world; and

(iii) In the totality, the incidents of bias or discriminatory conduct that negatively impacted the individual's entry into or advancement in the business world establish chronic and substantial social disadvantage.

* * * * *

■ 9. Amend § 124.104 by revising paragraph (b)(1) to read as follows:

§ 124.104 Who is economically disadvantaged?

* * * * *

(b) *Submission of financial information.* (1) Each individual claiming economic disadvantage must submit personal financial information.

* * * * *

■ 10. Amend § 124.105 by revising paragraph (h)(2) introductory text to read as follows:

§ 124.105 What does it mean to be unconditionally owned by one or more disadvantaged individuals?

* * * * *

(h) * * *

(2) A non-Participant concern in the same or similar line of business or a principal of such concern may not own more than a 10 percent interest in a Participant that is in the developmental stage or more than a 20 percent interest in a Participant in the transitional stage of the program, except that a former Participant in the same or similar line of business or a principal of such a former Participant (except those that have been terminated from 8(a) BD program participation pursuant to §§ 124.303 and 124.304) may have an equity ownership interest of up to 20 percent in a current Participant in the developmental stage of the program or up to 30 percent in a transitional stage Participant.

* * * * *

■ 11. Amend § 124.106 introductory text by adding a new fifth sentence to read as follows:

§ 124.106 When do disadvantaged individuals control an applicant or Participant?

* * * Management experience need not be related to the same or similar industry as the primary industry classification of the applicant or Participant. * * *

* * * * *

■ 12. Amend § 124.108 by revising paragraph (a)(1) and by removing “10 percent” in paragraph (a)(4) and adding in its place “20 percent”.

The revision reads as follows:

§ 124.108 What other eligibility requirements apply for individuals or businesses?

(a) * * *

(1) If during the processing of an application, SBA receives adverse information from the applicant or a credible source regarding possible criminal conduct by the applicant or any of its principals, SBA may suspend further processing of the application and refer it to SBA's Office of Inspector General (OIG) for review. If the SBA suspends the application, but does not hear back from OIG within 45 days, SBA may proceed with application processing. The AA/BD will consider any findings of the OIG when evaluating the application.

* * * * *

■ 13. Amend § 124.109 by adding paragraphs (c)(2)(iv) and (c)(4)(iii) to read as follows:

§ 124.109 Do Indian tribes and Alaska Native Corporations have any special rules for applying to the 8(a) BD program?

* * * * *

(c) * * *

(2) * * *

(iv) In determining whether a tribally-owned concern has obtained, or is likely to obtain, a substantial unfair competitive advantage within an industry category, SBA will examine the firm's participation in the relevant six digit NAICS code nationally as compared to the overall small business share of that industry.

(A) SBA will consider the firm's percentage share of the national market and other relevant factors to determine whether the firm is dominant in a specific six-digit NAICS code with a particular size standard.

(B) SBA does not contemplate a finding of affiliation where a tribally-owned concern appears to have obtained an unfair competitive advantage in a local market, but remains competitive, but not dominant, on a national basis.

* * * * *

(4) * * *

(iii) The individuals responsible for the management and daily operations of a tribally-owned concern cannot manage more than two Program Participants at the same time.

(A) An individual's officer position, membership on the board of directors or position as a tribal leader does not necessarily imply that the individual is responsible for the management and daily operations of a given concern. SBA looks beyond these corporate formalities and examines the totality of the information submitted by the applicant to determine which individual(s) manage the actual day-to-day operations of the applicant concern.

(B) Officers, board members, and/or tribal leaders may control a holding company overseeing several tribally-owned or ANC-owned companies, provided they do not actually control the day-to-day management of more than two current 8(a) BD Program Participant firms.

* * * * *

■ 14. Amend § 124.110 as follows:

■ a. Add a sentence to the end of paragraph (b) introductory text;

■ b. Add paragraphs (b)(1) and (2);

■ c. Revise paragraph (c) introductory text and paragraph (c)(1);

■ d. Revise paragraph (d);

■ e. Redesignate paragraph (g) as paragraph (h); and

■ f. Add a new paragraph (g).

The additions and revisions read as follows:

§ 124.110 Do Native Hawaiian Organizations have any special rules for applying to the 8(a) BD program?

* * * * *

(b) * * * In determining whether an NHO-owned concern has obtained, or is likely to obtain, a substantial unfair competitive advantage within an industry category, SBA will examine the firm's participation in the relevant six digit NAICS code nationally.

(1) SBA will consider the firm's percentage share of the national market and other relevant factors to determine whether the firm is dominant in a specific six-digit NAICS code with a particular size standard.

(2) SBA does not contemplate a finding of affiliation where an NHO-owned concern appears to have obtained an unfair competitive advantage in a local market, but remains competitive, but not dominant, on a national basis.

(c) An NHO must establish that it is economically disadvantaged and that its business activities will principally benefit Native Hawaiians. Once an NHO establishes that it is economically disadvantaged in connection with the application of one NHO-owned firm, it need not reestablish such status in order to have other businesses that it owns certified for 8(a) BD program participation, unless specifically requested to do so by the AA/BD. If a different NHO identifies that it will serve and benefit the same Native Hawaiian community as an NHO that has already established its economic disadvantage status, that NHO need not establish its economic disadvantage status in connection with an 8(a) BD application of a business concern that it owns, unless specifically requested to do so by the AA/BD.

(1) In order to establish that an NHO is economically disadvantaged, it must demonstrate that it will principally benefit economically disadvantaged Native Hawaiians. To do this, the NHO must provide data showing the economic condition of the Native Hawaiian community that it intends to serve, including:

(i) The number of Native Hawaiians in the community that the NHO intends to serve;

(ii) The present Native Hawaiian unemployment rate of those individuals;

(iii) The per capita income of those Native Hawaiians, excluding judgment awards;

(iv) The percentage of those Native Hawaiians below the poverty level; and

(v) The access to capital of those Native Hawaiians.

* * * * *

(d) An NHO must control the applicant or Participant firm. To establish that it is controlled by an NHO, an applicant or Participant must demonstrate that the NHO controls its board of directors, managing members, managers or managing partners.

(1) The NHO need not possess the technical expertise necessary to run the NHO-owned applicant or Participant firm. The NHO must have managerial experience of the extent and complexity needed to run the concern. Management experience need not be related to the same or similar industry as the primary industry classification of the applicant or Participant.

(2) An individual responsible for the day-to-day management of an NHO-owned firm need not establish personal social and economic disadvantage.

* * * * *

(g) An NHO-owned firm's eligibility for 8(a) BD participation is separate and distinct from the individual eligibility of the NHO's members, directors, or managers.

(1) The eligibility of an NHO-owned concern is not affected by the former 8(a) BD participation of one or more of the NHO's individual members.

(2) In determining whether an NHO is economically disadvantaged, SBA may consider the individual economic status of an NHO member or director even if the member or director previously used his or her disadvantaged status to qualify an individually owned 8(a) applicant or Participant.

* * * * *

■ 15. Amend § 124.111 by adding a sentence to the end of paragraph (c) and by adding paragraphs (c)(1) and (2) to read as follows:

§ 124.111 Do Community Development Corporations (CDCs) have any special rules for applying to the 8(a) BD program?

* * * * *

(c) * * * In determining whether a CDC-owned concern has obtained, or is likely to obtain, a substantial unfair competitive advantage within an industry category, SBA will examine the firm's participation in the relevant six digit NAICS code nationally.

(1) SBA will consider the firm's percentage share of the national market and other relevant factors to determine whether the firm is dominant in a specific six-digit NAICS code with a particular size standard.

(2) SBA does not contemplate a finding of affiliation where a CDC-owned concern appears to have obtained an unfair competitive advantage in a local market, but remains competitive, but not dominant, on a national basis.

* * * * *

■ 16. Amend § 124.112 by designating the text of paragraph (e) as paragraph (e)(1), and adding paragraph (e)(2) to read as follows:

§ 124.112 What criteria must a business meet to remain eligible to participate in the 8(a) BD program?

* * * * *

(e) * * *

(2) SBA may change the primary industry classification contained in a Participant's business plan where the greatest portion of the Participant's total revenues during the Participant's last three completed fiscal years has evolved from one NAICS code to another. As part of its annual review, SBA will consider whether the primary NAICS code contained in a Participant's business plan continues to be appropriate.

(i) Where SBA believes that the primary industry classification contained in a Participant's business plan does not match the Participant's actual revenues over the Participant's most recently completed three fiscal years, SBA may notify the Participant of its intent to change the Participant's primary industry classification and afford the Participant the opportunity to respond.

(ii) A Participant may challenge SBA's intent to change its primary industry classification by demonstrating why it believes the primary industry classification contained in its business plan continues to be appropriate, despite an increase in revenues in a secondary NAICS code beyond those received in its designated primary industry classification. The Participant should identify: All non-federal work that it has performed in its primary NAICS code; any efforts it has made and any plans it has to make to receive contracts to obtain contracts in its primary NAICS code; all contracts that it was awarded that it believes could have been classified under its primary NAICS code, but which a contracting officer assigned another reasonable NAICS code; and any other information that it believes has a bearing on why its primary NAICS code should not be changed despite performing more work in another NAICS code.

(iii) As long as the Participant provides a reasonable explanation as to why the identified primary NAICS code continues to be its primary NAICS code, SBA will not change the Participant's primary NAICS code.

(iv) Where an SBA change in the primary NAICS code of an entity-owned firm results in the entity having two Participants with the same primary NAICS code, the second, newer Participant will not be able to receive any 8(a) contracts in the six-digit NAICS code that is the primary NAICS code of the first, older Participant for a period of time equal to two years after the first Participant leaves the 8(a) BD program.

* * * * *

■ 17. Revise § 124.202 to read as follows:

§ 124.202 How must an application be filed?

An application for 8(a) BD program admission must be filed in an electronic format. An electronic application can be found by going to the 8(a) BD page of SBA's Web site (*http://www.sba.gov*). The SBA district office will provide an applicant with information regarding the 8(a) BD program.

■ 18. Revise § 124.203 to read as follows:

§ 124.203 What must a concern submit to apply to the 8(a) BD program?

Each 8(a) BD applicant concern must submit those forms and attachments required by SBA when applying for admission to the 8(a) BD program. These forms and attachments may include, but not be limited to, financial statements, copies of signed Federal personal and business tax returns, individual and business bank statements, personal history statements, and any additional documents SBA deems necessary to determine eligibility. In all cases, the applicant must provide a signature from each individual claiming social and economic disadvantage status. The electronic signing protocol will ensure the Agency is able to specifically identify the individual making the representation. The individual(s) upon whom eligibility is based take responsibility for the accuracy of all information submitted on behalf of the applicant.

■ 19. Amend § 124.305 by removing the period at the end of paragraph (h)(1)(ii) and adding in its place "; or", adding paragraphs (h)(1)(iii) and (iv), redesignating paragraph (h)(5) as (h)(6) and adding a new paragraph (h)(5).

The additions read as follows:

§ 124.305 What is suspension and how is a Participant suspended from the 8(a) BD program?

* * * * *

(h)(1) * * *

(iii) A Participant has a principal place of business located in a federally declared disaster area and elects to suspend its participation in the 8(a) BD program for a period of up to one year from the date of the disaster declaration to allow the firm to recover from the disaster and take full advantage of the program. A Participant that elects to be suspended may request that the suspension be lifted prior to the end date of the original request; or

(iv) Federal appropriations for one or more federal departments or agencies have lapsed, SBA has previously accepted an offer for a sole source 8(a) award on behalf of the Participant, award is pending, and the Participant elects to suspend its participation in the 8(a) BD program during the lapse in federal appropriations.

* * * * *

(5) Where a Participant is suspended pursuant to (h)(1)(iv) of this section, the Participant must notify SBA when the lapse in appropriation ends so that SBA can immediately lift the suspension. When the suspension is lifted, the length of the suspension will be added to the concern's program term.

* * * * *

■ 20. Amend § 124.501 by revising the first sentence of paragraph (a) and by adding two sentences to the end of paragraph (b) to read as follows:

§ 124.501 What general provisions apply to the award of 8(a) contracts?

(a) Pursuant to section 8(a) of the Small Business Act, SBA is authorized to enter into all types of contracts with other Federal agencies regardless of the place of performance, including contracts to furnish equipment, supplies, services, leased real property, or materials to them or to perform construction work for them, and to contract the performance of these contracts to qualified Participants. * * *

(b) * * * In addition, for multiple award contracts not set aside for the 8(a) BD program, a procuring agency may set aside specific orders to be competed only among eligible 8(a) Participants, regardless of the place of performance. Such an order may be awarded as an 8(a) award where the order was offered to and accepted by SBA as an 8(a) award and the order specifies that the performance of work and/or non-manufacturer rule requirements apply as appropriate.

* * * * *

■ 21. Amend § 124.502 by revising paragraph (c)(9), by removing "and" at the end of paragraph (c)(16), by redesignating paragraph (c)(17) as (c)(18), and by adding a new paragraph (c)(17).

The revision and addition read as follows:

§ 124.502 How does an agency offer a procurement to SBA for award through the 8(a) BD program?

* * * * *

(c) * * *

(9) The acquisition history, if any, of the requirement, including specifically whether the requirement is a follow-on requirement, and whether any portion of the contract was previously performed by a small business outside of the 8(a) BD program;

* * * * *

(17) A statement that the necessary justification and approval under the Federal Acquisition Regulation has occurred where a requirement whose estimated contract value exceeds $22,000,000 is offered to SBA as a sole source requirement on behalf of a specific Participant; and

* * * * *

■ 22. Amend § 124.503 by adding two sentences to the end of paragraph (a)(1), by adding one sentence to the end of paragraph (a)(2), and by adding paragraph (g)(4) to read as follows:

§ 124.503 How does SBA accept a procurement for award through the 8(a) BD program?

(a) * * *

(1) * * * As part of its acceptance of a sole source requirement, SBA will determine the eligibility of the Participant identified in the offering letter, using the same analysis set forth in § 124.507(b)(2). Where a procuring agency offers a sole source 8(a) procurement on behalf of a joint venture, SBA will conduct an eligibility review of the lead 8(a) party to the joint venture as part of its acceptance, and will approve the joint venture prior to award pursuant to § 124.513(e).

(2) * * * For a competitive 8(a) procurement, SBA will determine the eligibility of the apparent successful offeror pursuant to § 124.507(b).

* * * * *

(g) * * *

(4) A procuring agency may offer, and SBA may accept, an order issued under a BOA to be awarded through the 8(a) BD program where the BOA itself was not accepted for the 8(a) BD program, but rather was awarded on an unrestricted basis.

* * * * *

§ 124.504 [Amended]

■ 23. Amend § 124.504 by removing the reference to "§ 124.503(h)" in paragraph (d)(4) and adding in its place "§ 124.50(3)(h)(2)".

■ 24. Amend § 124.506 by removing "$6,500,000" in paragraph (a)(2)(ii) and adding in its place "$7,000,000", and adding paragraph (b)(5).

The addition reads as follows:

§ 124.506 At what dollar threshold must an 8(a) procurement be competed among eligible Participants?

* * * * *

(b) * * *

(5) An agency may not award an 8(a) sole source contract for an amount exceeding $22,000,000 unless the contracting officer justifies the use of a sole source contract in writing and has obtained the necessary approval under the Federal Acquisition Regulation.

* * * * *

■ 25. Amend § 124.507 by redesignating paragraphs (b)(3) through (5) as paragraphs (b)(4) through (6), respectively, and by adding new paragraph (b)(3) to read as follows:

§ 124.507 What procedures apply to competitive 8(a) procurements?

* * * * *

(b) * * *

(3) Where the apparent successful offeror is a joint venture and SBA has not approved the joint venture prior to receiving notification of the apparent successful offeror, review of the joint venture will be part of the eligibility determination conducted under this paragraph (b). If SBA cannot approve the joint venture within 5 days of receiving a procuring activity's request for an eligibility determination, and the procuring activity does not grant additional time for review, SBA will be unable to verify the eligibility of the joint venture for award.

* * * * *

■ 26. Amend § 124.513 as follows:

■ a. Add paragraph (b)(3);
■ b. Revise paragraphs (c)(2), (c)(6) and (7), (d), and (e)(1);
■ c. Add paragraphs (e)(2)(iii) and (e)(3);
■ d. Redesignate paragraphs (f), (g), (h), and (i) as paragraphs (g), (h), (i) and (k), respectively;
■ e. Add new paragraph (f);
■ f. Revise newly redesignated paragraphs (g) and (i); and
■ g. Add paragraph (j) and (l).

The additions and revisions read as follows:

§ 124.513 Under what circumstances can a joint venture be awarded an 8(a) contract?

* * * * *

(b) * * *

(3) SBA approval of a joint venture agreement pursuant to paragraph (e) of this section does not equate to a formal size determination. As such, despite SBA's approval of a joint venture, the size status of a joint venture that is the apparent successful offeror for a competitive 8(a) contract may be protested pursuant to § 121.1001(a)(2) of this chapter. *See* § 124.517(b).

(c) * * *

(2) Designating an 8(a) Participant as the managing venturer of the joint venture and an employee of an 8(a) Participant as the project manager responsible for performance of the contract. The individual identified as the project manager of the joint venture need not be an employee of the 8(a) Participant at the time the joint venture submits an offer, but, if he or she is not, there must be a signed letter of intent that the individual commits to be employed by the 8(a) Participant if the joint venture is the successful offeror. The individual identified as the project manager cannot be employed by the mentor and become an employee of the 8(a) Participant for purposes of performance under the joint venture;

* * * * *

(6) Itemizing all major equipment, facilities, and other resources to be furnished by each party to the joint venture, with a detailed schedule of cost or value of each, where practical. If a contract is indefinite in nature, such as an indefinite quantity contract or a multiple award contract where the level of effort or scope of work is not known, the joint venture must provide a general description of the anticipated major equipment, facilities, and other resources to be furnished by each party to the joint venture, without a detailed schedule of cost or value of each, or in the alternative, specify how the parties to the joint venture will furnish such resources to the joint venture once a definite scope of work is made publicly available;

(7) Specifying the responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, including ways that the parties to the joint venture will ensure that the joint venture and the 8(a) partner(s) to the joint venture will meet the performance of work requirements set forth in paragraph (d) of this section, where practical. If a contract is indefinite in nature, such as an indefinite quantity contract or a multiple award contract where the level of effort or scope of work is not known, the joint venture must provide a general description of the anticipated responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, not including the ways that the parties to the joint venture will ensure that the joint venture and the 8(a) partner(s) to the joint venture will meet the performance of work requirements set forth in paragraph (d) of this section, or in the alternative, specify how the parties to the joint venture will define such responsibilities once a definite scope of work is made publicly available;

* * * * *

(d) *Performance of work.* (1) For any 8(a) contract, including those between a protégé and a mentor authorized by § 124.520, the joint venture must perform the applicable percentage of work required by § 124.510 of this chapter.

(2) The 8(a) partner(s) to the joint venture must perform at least 40% of the work performed by the joint venture.

(i) The work performed by the 8(a) partner(s) to a joint venture must be more than administrative or ministerial functions so that the 8(a) partners gain substantive experience.

(ii) The amount of work done by the partners will be aggregated and the work done by the 8(a) partner(s) must be at least 40% of the total done by all partners. In determining the amount of work done by a non-8(a) partner, all work done by the non-8(a) partner and any of its affiliates at any subcontracting tier will be counted.

(e) * * *

(1) SBA must approve a joint venture agreement prior to the award of an 8(a) contract on behalf of the joint venture. A Participant may submit a joint venture agreement to SBA for approval at any time, whether or not in connection with a specific 8(a) procurement.

(2) * * *

(iii) If a second or third contract to be awarded a joint venture is not an 8(a) contract, the Participant would not have to submit an addendum setting forth contract performance for the non-8(a) contract(s) to SBA for approval.

(3) Where a joint venture has been established and approved by SBA without a corresponding specific 8(a) contract award (including where a joint venture is established in connection with a blanket purchase agreement (BPA), basic agreement (BA), or basic ordering agreement (BOA)), the Participant must submit an addendum to the joint venture agreement, setting forth the performance requirements, to SBA for approval for each of the three 8(a) contracts authorized to be awarded to the joint venture. In the case of a BPA, BA or BOA, each order issued under the agreement would count as a separate contract award, and SBA would need to approve the addendum for each order prior to award of the order to the joint venture.

(f) *Past performance and experience.* When evaluating the past performance and experience of an entity submitting an offer for an 8(a) contract as a joint venture approved by SBA pursuant to this section, a procuring activity must consider work done individually by each partner to the joint venture as well as any work done by the joint venture itself previously.

(g) *Contract execution.* Where SBA has approved a joint venture, the procuring activity will execute an 8(a) contract in the name of the joint venture entity or the 8(a) Participant, but in either case will identify the award as one to an 8(a) joint venture or an 8(a) mentor-protégé joint venture, as appropriate.

* * * * *

(i) *Inspection of records.* The joint venture partners must allow SBA's authorized representatives, including representatives authorized by the SBA Inspector General, during normal business hours, access to its files to inspect and copy all records and documents relating to the joint venture.

(j) *Certification of compliance.* Prior to the performance of any 8(a) contract by a joint venture, the 8(a) BD Participant to the joint venture must submit a written certification to the contracting officer and SBA, signed by an authorized official of each partner to the joint venture, stating as follows:

(i) The parties have entered into a joint venture agreement that fully complies with paragraph (c) of this section;

(ii) The parties will perform the contract in compliance with the joint venture agreement and with the performance of work requirements set forth in paragraph (d) of this section.

(iii) The parties have obtained SBA's approval of the joint venture agreement and any addendum to that agreement and that there have been no modifications to the agreement that SBA has not approved.

* * * * *

(l) *Basis for suspension or debarment.* The Government may consider the following as a ground for suspension or debarment as a willful violation of a regulatory provision or requirement applicable to a public agreement or transaction:

(1) Failure to enter a joint venture agreement that complies with paragraph (c) of this section;

(2) Failure to perform a contract in accordance with the joint venture agreement or performance of work requirements in paragraph (d) of this section; or

(3) Failure to submit the certification required by paragraph (e) of this section or comply with paragraph (i) of this section.

■ 27. Amend § 124.515 by revising paragraph (a) introductory text and by removing the words "An 8(a) contract" in paragraph (a)(1) introductory text and adding in their place the words "An 8(a) contract or order".

The revision reads as follows:

§ 124.515 Can a Participant change its ownership or control and continue to perform an 8(a) contract, and can it transfer performance to another firm?

(a) An 8(a) contract (or 8(a) order where the underlying contract is not an 8(a) contract) must be performed by the Participant that initially received it unless a waiver is granted under paragraph (b) of this section.

* * * * *

■ 28. Amend § 124.520 as follows:
■ a. Revise the second sentence of paragraph (a);
■ b. Revise paragraph (b)(1)(i);
■ c. Remove the words "or non-profit entity" from the first sentence of paragraph (b) introductory text and from the second sentence of paragraph (b)(2);
■ d. Revise the last sentence of paragraph (b)(2);
■ e. Revise paragraph (b)(3);
■ f. Revise paragraphs (c)(1) and (4);
■ g. Remove paragraph (c)(5);
■ h. Revise paragraph (d)(1)(iii);
■ i. Add paragraph (d)(5);
■ j. Redesignate paragraphs (e)(2) through (5) as paragraphs (e)(3) through (6), respectively;
■ k. Add a new paragraph (e)(2);
■ l. Revise newly designated paragraph (e)(5);
■ m. Add paragraphs (e)(7) and (8); and
■ n. Add paragraph (i).

The revisions and additions read as follows:

§ 124.520 What are the rules governing SBA's 8(a) Mentor-Protégé program?

(a) * * * This assistance may include technical and/or management assistance; financial assistance in the form of equity investments and/or loans; subcontracts (either from the mentor to the protégé or from the protégé to the mentor); trade education; and/or assistance in performing prime contracts with the Government through joint venture arrangements. * * *

(b) * * *

(1) * * *

(i) Is capable of carrying out its responsibilities to assist the protégé firm under the proposed mentor-protégé agreement;

* * * * *

(2) * * * Under no circumstances will a mentor be permitted to have more than three protégés at one time in the aggregate under the mentor-protégé programs authorized by §§ 124.520 and 125.9 of this chapter.

(3) In order to demonstrate that it is capable of carrying out its responsibilities to assist the protégé firm under the proposed mentor-protégé agreement, a firm seeking to be a mentor may submit to the SBA copies of the federal tax returns it submitted to the IRS, or audited financial statements, including any notes, or in the case of publicly traded concerns, the filings required by the Securities and Exchange Commission (SEC), for the past three years.

* * * * *

(c) * * *

(1) In order to initially qualify as a protégé firm, a concern must:

(i) Qualify as small for the size standard corresponding to its primary NAICS code or identify that it is seeking business development assistance with respect to a secondary NAICS code and qualify as small for the size standard corresponding to that NAICS code; and

(ii) Demonstrate how the business development assistance to be received through its proposed mentor-protégé relationship would advance the goals and objectives set forth in its business plan.

* * * * *

(4) The AA/BD may authorize a Participant to be both a protégé and a mentor at the same time where the Participant can demonstrate that the second relationship will not compete or otherwise conflict with the first mentor-protégé relationship.

(d) * * *

(1) * * *

(iii) Once a protégé firm graduates or otherwise leaves the 8(a) BD program or grows to be other than small for its primary NAICS code, it will not be eligible for any further 8(a) contracting benefits from its 8(a) BD mentor-protégé relationship. Leaving the 8(a) BD program, growing to be other than small for its primary NAICS code, or terminating the mentor-protégé relationship while a protégé is still in the program, does not, however, generally affect contracts previously awarded to a joint venture between the protégé and its mentor. A protégé firm that graduates or otherwise leaves the 8(a) BD program but continues to qualify as a small business may transfer its 8(a) mentor-protégé relationship to a small business mentor-protégé relationship. In order to effectuate such a transfer, a firm must notify SBA of its intent to transfer its 8(a) mentor-protégé relationship to a small business mentor-protégé relationship. The transfer will occur without any application or approval process.

(A) A joint venture between a protégé firm that continues to qualify as small and its mentor may certify its status as small for any Government contract or subcontract so long as the protégé (and/or the joint venture) has not been determined to be other than small for the size standard corresponding to the procurement at issue (or any higher size standard).

(B) Where the protégé firm no longer qualifies as small, the receipts and/or employees of the protégé and mentor would generally be aggregated in determining the size of any joint venture between the mentor and protégé after that date.

(C) Except for contracts with durations of more than five years (including options), a contract awarded to a joint venture between a protégé and a mentor as a small business continues to qualify as an award to small business for the life of that contract and the joint venture remains obligated to continue performance on that contract.

(D) For contracts with durations of more than five years (including options), where size re-certification is required no more than 120 days prior to the end of the fifth year of the contract and no more than 120 days prior to exercising any option thereafter, once the protégé firm no longer qualifies as small for its primary NAICS code, the joint venture must aggregate the receipts/employees of the partners to the joint venture in determining whether it continues to qualify as and can re-certify itself to be a small business under the size standard corresponding to the NAICS code assigned to that contract. The rules set forth in § 121.404(g)(3) of this chapter apply in such circumstances.

* * * * *

(5) Where appropriate, procuring activities may provide incentives in the contract evaluation process to a firm that will provide significant subcontracting work to its SBA-approved protégé firm.

(e) * * *

(2) A firm seeking SBA's approval to be a protégé must identify any other mentor-protégé relationship it has through another federal agency or SBA and provide a copy of each such mentor-protégé agreement to SBA.

(i) The 8(a) BD mentor-protégé agreement must identify how the assistance to be provided by the proposed mentor is different from assistance provided to the protégé through another mentor-protégé relationship, either with the same or a different mentor.

(ii) A firm seeking SBA's approval to be a protégé may terminate a mentor-protégé relationship it has through another agency and use any not yet provided assistance identified in the other mentor-protégé agreement as part of the assistance that will be provided through the 8(a) BD mentor-protégé relationship. Any assistance that has already been provided through another mentor-protégé relationship cannot be identified as assistance that will be provided through the 8(a) BD mentor-protégé relationship.

* * * * *

(5) SBA will review the mentor-protégé relationship annually during the protégé firm's annual review to determine whether to approve its continuation for another year. Unless rescinded in writing at that time, the mentor-protégé relationship will automatically renew without additional written notice of continuation or extension to the protégé firm. The term of a mentor-protégé agreement may not exceed three years, but may be extended for a second three years. A protégé may have two three-year mentor-protégé agreements with different mentors, and each may be extended an additional three years provided the protégé has received the agreed-upon business development assistance and will continue to receive additional assistance through the extended mentor-protégé agreement.

* * * * *

(7) If control of the mentor changes (through a stock sale or otherwise), the previously approved mentor-protégé relationship may continue provided that, after the change in control, the mentor expresses in writing to SBA that it acknowledges the mentor-protégé agreement and certifies that it will continue to abide by its terms.

(8) SBA may terminate the mentor-protégé agreement at any time if it determines that the protégé is not adequately benefiting from the relationship or that the parties are not complying with any term or condition of the mentor protégé agreement. In the event SBA terminates the relationship, the mentor-protégé joint venture is obligated to complete any previously awarded contracts unless the procuring agency issues a stop work order.

* * * * *

(i) *Results of mentor-protégé relationship.* (1) In order to assess the results of a mentor-protégé relationship upon its completion, the protégé must report to SBA whether it believed the mentor-protégé relationship was beneficial and describe any lasting benefits to the protégé.

(2) Where a protégé does not report the results of a mentor-protégé relationship upon its completion, SBA will not approve a second mentor-protégé relationship either under this section or under § 125.9 of this chapter.

§ 124.604 [Amended]

■ 29. Amend § 124.604 by removing the phrase "annual review submission" and adding in its place the phrase "annual financial statement submission (*see* § 124.602)" in the first sentence.

§ 124.1002 [Amended]

■ 30. Amend § 124.1002 by removing paragraph (b)(4).

PART 125—GOVERNMENT CONTRACTING PROGRAMS

■ 31. The authority citation for part 125 is revised to read as follows:

Authority: 15 U.S.C. 632(p), (q); 634(b)(6); 637; 644; 657f; 657r.

■ 32. Amend § 125.2 by revising the third sentence of paragraph (a) introductory text to read as follows:

§ 125.2 What are SBA's and the procuring agency's responsibilities when providing contracting assistance to small businesses?

(a) *General.* * * * Small business concerns must receive any award (including orders, and orders placed against Multiple Award Contracts) or contract, part of any such award or contract, any contract for the sale of Government property, or any contract resulting from a reverse auction, regardless of the place of performance, which SBA and the procuring or disposal agency determine to be in the interest of:

* * * * *

■ 33. Amend § 125.5 by revising the second and third sentences of paragraph (a)(1) to read as follows:

§ 125.5 What is the Certificate of Competency Program?

(a) *General.* (1) * * * A COC is a written instrument issued by SBA to a Government contracting officer, certifying that one or more named small business concerns possess the responsibility to perform a specific Government procurement (or sale) contract, including any contract deriving from a reverse auction. The COC Program is applicable to all Government procurement actions, including Multiple Award Contracts and orders placed against Multiple Award Contracts, where the contracting officer has used any issues of capacity or credit (responsibility) to determine suitability for an award. * * *

* * * * *

§ 125.6 [Amended]

■ 34. Amend § 125.6 by removing "§ 125.15" from paragraph (b) introductory text and adding in its place "§ 125.18", and by removing "§ 125.15(b)(3)" from paragraph (b)(5) and adding in its place "§ 125.18(b)(3)".

§§ 125.8 through 125.30 [Redesignated as §§ 125.11 through 125.33]

■ 35. Redesignate §§ 125.8 through 125.30 as §§ 125.11 through 125.33, respectively, and locate them in the subparts as indicated in the following list:

■ i. Section 125.11 in subpart A;
■ ii. Sections 125.12 through 125.16 in subpart B;
■ iii. Sections 125.17 through 125.26 in subpart C;
■ iv. Sections 125.27 through 125.31 in subpart D; and
■ v. Sections 125.32 and 125.33 in subpart E.

■ 36. Add new §§ 125.8, 125.9 and 125.10 to precede subpart A to read as follows:

§ 125.8 What requirements must a joint venture satisfy to submit an offer for a procurement or sale set aside or reserved for small business?

(a) *General.* A joint venture of two or more business concerns may submit an offer as a small business for a Federal procurement, subcontract or sale so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract, or qualify as small under one of the exceptions to affiliation set forth in § 121.103(h)(3) of this chapter.

(b) *Contents of joint venture agreement.* (1) A joint venture agreement between two or more entities that individually qualify as small need not be in any specific form or contain any specific conditions in order for the joint venture to qualify as a small business.

(2) Every joint venture agreement to perform a contract set aside or reserved for small business between a protégé small business and its SBA-approved mentor authorized by § 125.9 or § 124.520 of this chapter must contain a provision:

(i) Setting forth the purpose of the joint venture;

(ii) Designating a small business as the managing venturer of the joint venture, and an employee of the small business managing venturer as the project manager responsible for performance of the contract. The individual identified as the project manager of the joint venture need not be an employee of the small business at the time the joint venture submits an offer, but, if he or she is not, there must be a signed letter of intent that the individual commits to be employed by the small business if the joint venture is the successful offeror. The individual identified as the project manager cannot be employed by the mentor and become an employee of the small business for purposes of performance under the joint venture;

(iii) Stating that with respect to a separate legal entity joint venture, the small business must own at least 51% of the joint venture entity;

(iv) Stating that the small business must receive profits from the joint venture commensurate with the work performed by the small business, or in the case of a separate legal entity joint venture, commensurate with their ownership interests in the joint venture;

(v) Providing for the establishment and administration of a special bank account in the name of the joint venture. This account must require the signature of all parties to the joint venture or designees for withdrawal purposes. All payments due the joint venture for performance on a contract set aside or reserved for small business will be deposited in the special account; all expenses incurred under the contract will be paid from the account as well;

(vi) Itemizing all major equipment, facilities, and other resources to be furnished by each party to the joint venture, with a detailed schedule of cost or value of each, where practical. If a contract is indefinite in nature, such as an indefinite quantity contract or a multiple award contract where the level of effort or scope of work is not known, the joint venture must provide a general description of the anticipated major equipment, facilities, and other resources to be furnished by each party to the joint venture, without a detailed schedule of cost or value of each, or in the alternative, specify how the parties to the joint venture will furnish such resources to the joint venture once a definite scope of work is made publicly available;

(vii) Specifying the responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, including ways that the parties to the joint venture will ensure that the joint venture and the small business partner(s) to the joint venture will meet the performance of work requirements set forth in paragraph (d) of this section, where practical. If a contract is indefinite in nature, such as an indefinite quantity contract or a multiple award contract where the level of effort or scope of work is not known, the joint venture must provide a general description of the anticipated responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, not including the ways that the parties to the joint venture will ensure that the joint venture and the small business partner(s) to the joint venture will meet the performance of work requirements set forth in paragraph (d) of this section, or in the alternative, specify how the parties to the joint venture will define such responsibilities once a definite scope of work is made publicly available;

(viii) Obligating all parties to the joint venture to ensure performance of a contract set aside or reserved for small business and to complete performance despite the withdrawal of any member;

(ix) Designating that accounting and other administrative records relating to the joint venture be kept in the office of the small business managing venturer, unless approval to keep them elsewhere is granted by the District Director or his/her designee upon written request;

(x) Requiring that the final original records be retained by the small business managing venturer upon completion of any contract set aside or reserved for small business that was performed by the joint venture;

(xi) Stating that quarterly financial statements showing cumulative contract receipts and expenditures (including salaries of the joint venture's principals) must be submitted to SBA not later than 45 days after each operating quarter of the joint venture; and

(xii) Stating that a project-end profit and loss statement, including a statement of final profit distribution, must be submitted to SBA no later than 90 days after completion of the contract.

(c) *Performance of work.* (1) For any contract set aside or reserved for small business that is to be performed by a joint venture between a small business protégé and its SBA-approved mentor authorized by § 125.9, the joint venture must perform the applicable percentage of work required by § 125.6, and the small business partner to the joint venture must perform at least 40% of the work performed by the joint venture.

(2) The work performed by the small business partner to a joint venture must be more than administrative or ministerial functions so that it gains substantive experience.

(3) The amount of work done by the partners will be aggregated and the work done by the small business protégé partner must be at least 40% of the total done by the partners. In determining the amount of work done by a mentor participating in a joint venture with a small business protégé, all work done by the mentor and any of its affiliates at any subcontracting tier will be counted.

(d) *Certification of compliance.* Prior to the performance of any contract set aside or reserved for small business by a joint venture between a protégé small business and a mentor authorized by § 125.9, the small business partner to the joint venture must submit a written certification to the contracting officer and SBA, signed by an authorized official of each partner to the joint venture, stating as follows:

(1) The parties have entered into a joint venture agreement that fully complies with paragraph (b) of this section;

(2) The parties will perform the contract in compliance with the joint venture agreement and with the performance of work requirements set forth in paragraph (c) of this section.

(e) *Past performance and experience.* When evaluating the past performance and experience of an entity submitting an offer for a contract set aside or reserved for small business as a joint venture established pursuant to this section, a procuring activity must consider work done individually by each partner to the joint venture as well as any work done by the joint venture itself previously.

(f) *Contract execution.* The procuring activity will execute a contract set aside or reserved for small business in the name of the joint venture entity or a small business partner to the joint venture, but in either case will identify the award as one to a small business joint venture or a small business mentor-protégé joint venture, as appropriate.

(g) *Inspection of records.* The joint venture partners must allow SBA's authorized representatives, including representatives authorized by the SBA Inspector General, during normal business hours, access to its files to inspect and copy all records and documents relating to the joint venture.

(h) *Performance of work reports.* In connection with any contract set aside or reserved for small business that is awarded to a joint venture between a protégé small business and a mentor authorized by § 125.9, the small business partner must describe how it is meeting or has met the applicable performance of work requirements for each contract set aside or reserved for small business that it performs as a joint venture.

(1) The small business partner to the joint venture must annually submit a report to the relevant contracting officer and to the SBA, signed by an authorized official of each partner to the joint venture, explaining how the performance of work requirements are being met for each contract set aside or reserved for small business that is performed during the year.

(2) At the completion of every contract set aside or reserved for small business that is awarded to a joint venture between a protégé small business and a mentor authorized by § 125.9, the small business partner to the joint venture must submit a report to the relevant contracting officer and to the SBA, signed by an authorized official of each partner to the joint venture, explaining how and certifying that the performance of work requirements were met for the contract, and further certifying that the contract was performed in accordance with the provisions of the joint venture agreement that are required under paragraph (b) of this section.

(i) *Basis for suspension or debarment.* For any joint venture between a protégé small business and a mentor authorized by § 125.9, the Government may consider the following as a ground for suspension or debarment as a willful violation of a regulatory provision or requirement applicable to a public agreement or transaction:

(1) Failure to enter a joint venture agreement that complies with paragraph (b) of this section;

(2) Failure to perform a contract in accordance with the joint venture agreement or performance of work requirements in paragraph (c) of this section; or

(3) Failure to submit the certification required by paragraph (d) of this section or comply with paragraph (g) of this section.

(j) *Compliance with performance of work requirements.* Any person with information concerning a joint venture's compliance with the performance of work requirements may report that information to SBA and/or the SBA Office of Inspector General.

§ 125.9 What are the rules governing SBA's small business mentor-protégé program?

(a) *General.* The small business mentor-protégé program is designed to enhance the capabilities of protégé firms by requiring approved mentors to provide business development assistance to protégé firms and to improve the protégé firms' ability to successfully compete for federal contracts. This assistance may include technical and/or management assistance; financial assistance in the form of equity investments and/or loans; subcontracts (either from the mentor to the protégé or from the protégé to the mentor); trade education; and/or assistance in performing prime contracts with the Government through joint venture arrangements. Mentors are encouraged to provide assistance relating to the performance of contracts set aside or reserved for small business so that protégé firms may more fully develop their capabilities.

(b) *Mentors.* Any concern that demonstrates a commitment and the ability to assist small business concerns may act as a mentor and receive benefits as set forth in this section. This includes other than small businesses.

(1) In order to qualify as a mentor, a concern must demonstrate that it:

(i) Is capable of carrying out its responsibilities to assist the protégé firm under the proposed mentor-protégé agreement;

(ii) Possesses good character;

(iii) Does not appear on the federal list of debarred or suspended contractors; and

(iv) Can impart value to a protégé firm due to lessons learned and practical experience gained or through its knowledge of general business operations and government contracting.

(2) In order to demonstrate that it is capable of carrying out its responsibilities to assist the protégé firm under the proposed mentor-protégé agreement, a firm seeking to be a mentor may submit to the SBA copies of the federal tax returns it submitted to the IRS, or audited financial statements, including any notes, or in the case of publicly traded concerns, the filings required by the Securities and Exchange Commission (SEC), for the past three years.

(3) Once approved, a mentor must annually certify that it continues to possess good character and a favorable financial position.

(4) Generally, a mentor will have no more than one protégé at a time. However, SBA may authorize a concern to mentor more than one protégé at a time where it can demonstrate that the additional mentor-protégé relationship will not adversely affect the development of either protégé firm (*e.g.*, the second firm may not be a competitor of the first firm). Under no circumstances will a mentor be permitted to have more than three protégés at one time in the aggregate under the mentor-protégé programs authorized by §§ 124.520 and 125.9 of this chapter.

(c) *Protégés.* (1) In order to initially qualify as a protégé firm, a concern must qualify as small for the size standard corresponding to its primary NAICS code or identify that it is seeking business development assistance with respect to a secondary NAICS code and qualify as small for the size standard corresponding to that NAICS code.

(i) A firm may self-certify that it qualifies as small for its primary or identified secondary NAICS code.

(ii) Where a firm is other than small for the size standard corresponding to its primary NAICS code and seeks to qualify as a small business protégé in a secondary NAICS code, the firm must demonstrate how the mentor-protégé relationship is a logical business progression for the firm and will further develop or expand current capabilities. SBA will not approve a mentor-protégé relationship in a secondary NAICS code in which the firm has no prior experience.

(2) A protégé firm may generally have only one mentor at a time. SBA may approve a second mentor for a particular protégé firm where the second relationship will not compete or otherwise conflict with the assistance set forth in the first mentor-protégé relationship and:

(i) The second relationship pertains to an unrelated NAICS code; or

(ii) The protégé firm is seeking to acquire a specific expertise that the first mentor does not possess.

(3) SBA may authorize a small business to be both a protégé and a mentor at the same time where the small business can demonstrate that the second relationship will not compete or otherwise conflict with the first mentor-protégé relationship.

(4) Where appropriate, SBA may examine the Service-Disabled Veteran-Owned Small Business status or Women-Owned Small Business status of a concern seeking to be a protégé that claims such status in any Federal procurement database.

(d) *Benefits.* (1) A protégé and mentor may joint venture as a small business for any government prime contract or subcontract, provided the protégé qualifies as small for the procurement. Such a joint venture may seek any type of small business contract (*i.e.*, small business set-aside, 8(a), HUBZone, SDVO, or WOSB) for which the protégé firm qualifies (*e.g.*, a protégé firm that qualifies as a WOSB could seek a WOSB set-aside as a joint venture with its SBA-approved mentor).

(i) SBA must approve the mentor-protégé agreement before the two firms may submit an offer as a joint venture on a particular government prime contract or subcontract in order for the joint venture to receive the exclusion from affiliation.

(ii) In order to receive the exclusion from affiliation, the joint venture must meet the requirements set forth in § 125.8(b)(2), (c), and (d).

(iii) Once a protégé firm no longer qualifies as a small business for the size standard corresponding to its primary NAICS code, it will not be eligible for any further contracting benefits from its mentor-protégé relationship. However, a change in the protégé's size status does not generally affect contracts previously awarded to a joint venture between the protégé and its mentor.

(A) Except for contracts with durations of more than five years (including options), a contract awarded to a joint venture between a protégé and a mentor as a small business continues to qualify as an award to small business for the life of that contract and the joint venture remains obligated to continue performance on that contract.

(B) For contracts with durations of more than five years (including options), where size re-certification is required under § 121.404(g)(3) of this chapter no more than 120 days prior to the end of the fifth year of the contract and no more than 120 days prior to exercising any option thereafter, once the protégé no longer qualifies as small for the size standard corresponding to its primary NAICS code, the joint venture must aggregate the receipts/employees of the partners to the joint venture in determining whether it continues to qualify as and can re-certify itself to be a small business under the size standard corresponding to the NAICS code assigned to that contract. The rules set forth in § 121.404(g)(3) of this chapter apply in such circumstances.

(2) In order to raise capital, the protégé firm may agree to sell or otherwise convey to the mentor an equity interest of up to 40% in the protégé firm.

(3) Notwithstanding the mentor-protégé relationship, a protégé firm may qualify for other assistance as a small business, including SBA financial assistance.

(4) No determination of affiliation or control may be found between a protégé firm and its mentor based solely on the mentor-protégé agreement or any assistance provided pursuant to the agreement. However, affiliation may be found for other reasons set forth in § 121.103 of this chapter.

(5) Where appropriate, procuring activities may provide incentives in the contract evaluation process to a firm that will provide significant subcontracting work to its SBA-approved protégé firm.

(e) *Written agreement.* (1) The mentor and protégé firms must enter a written agreement setting forth an assessment of the protégé's needs and providing a detailed description and timeline for the delivery of the assistance the mentor commits to provide to address those needs (*e.g.*, management and/or technical assistance, loans and/or equity investments, cooperation on joint venture projects, or subcontracts under prime contracts being performed by the mentor). The mentor-protégé agreement must:

(i) Address how the assistance to be provided through the agreement will help the protégé firm meet its goals as defined in its business plan;

(ii) Establish a single point of contact in the mentor concern who is responsible for managing and implementing the mentor-protégé agreement; and

(iii) Provide that the mentor will provide such assistance to the protégé firm for at least one year.

(2) A firm seeking SBA's approval to be a protégé must identify any other mentor-protégé relationship it has through another federal agency or SBA and provide a copy of each such mentor-protégé agreement to SBA.

(i) The small business mentor-protégé agreement must identify how the assistance to be provided by the proposed mentor is different from assistance provided to the protégé through another mentor-protégé relationship, either with the same or a different mentor.

(ii) A firm seeking SBA's approval to be a protégé may terminate a mentor-protégé relationship it has through another agency and use any not yet provided assistance identified in the other mentor-protégé agreement as part of the assistance that will be provided through the small business mentor-protégé relationship. Any assistance that has already been provided through another mentor-protégé relationship cannot be identified as assistance that will be provided through the small business mentor-protégé relationship.

(3) The written agreement must be approved by the Associate Administrator for Business Development (AA/BD) or his/her designee. The agreement will not be approved if SBA determines that the assistance to be provided is not sufficient to promote any real developmental gains to the protégé, or if SBA determines that the agreement is merely a vehicle to enable the mentor to receive small business contracts.

(4) The agreement must provide that either the protégé or the mentor may terminate the agreement with 30 days advance notice to the other party to the mentor-protégé relationship and to SBA.

(5) SBA will review the mentor-protégé relationship annually to determine whether to approve its continuation for another year. Unless rescinded in writing as a result of the review, the mentor-protégé relationship will automatically renew without additional written notice of continuation or extension to the protégé firm. The term of a mentor-protégé agreement may not exceed three years, but may be extended for a second three years. A protégé may have two three-year mentor-protégé agreements with different mentors, and each may be extended an additional three years provided the protégé has received the agreed-upon business development assistance and will continue to receive additional assistance through the extended mentor-protégé agreement.

(6) SBA must approve all changes to a mentor-protégé agreement in advance, and any changes made to the agreement must be provided in writing. If the parties to the mentor-protégé relationship change the mentor-protégé agreement without prior approval by SBA, SBA shall terminate the mentor-protégé relationship and may also propose suspension or debarment of one or both of the firms pursuant to paragraph (h) of this section where appropriate.

(7) If control of the mentor changes (through a stock sale or otherwise), the previously approved mentor-protégé relationship may continue provided that, after the change in control, the mentor expresses in writing to SBA that it acknowledges the mentor-protégé

agreement and certifies that it will continue to abide by its terms.

(8) SBA may terminate the mentor-protégé agreement at any time if it determines that the protégé is not benefiting from the relationship or that the parties are not complying with any term or condition of the mentor protégé agreement. In the event SBA terminates the relationship, the mentor-protégé joint venture is obligated to complete any previously awarded contracts unless the procuring agency issues a stop work order.

(f) *Decision to decline mentor-protégé relationship.* (1) Where SBA declines to approve a specific mentor-protégé agreement, the protégé may request the AA/BD or designee to reconsider the Agency's initial decline decision by filing a request for reconsideration within 45 calendar days of receiving notice that its mentor-protégé agreement was declined. The protégé may revise the proposed mentor-protégé agreement and provide any additional information and documentation pertinent to overcoming the reason(s) for the initial decline.

(2) SBA will issue a written decision within 45 calendar days of receipt of the protégé's request. SBA may approve the mentor-protégé agreement, deny it on the same grounds as the original decision, or deny it on other grounds.

(3) If SBA declines the mentor-protégé agreement solely on issues not raised in the initial decline, the protégé can ask for reconsideration as if it were an initial decline.

(4) If SBA's final decision is to decline a specific mentor-protégé agreement, the small business concern seeking to be a protégé cannot attempt to enter into another mentor-protégé relationship with the same mentor for a period of 60 calendar days from the date of the final decision. The small business concern may, however, submit another proposed mentor-protégé agreement with a different proposed mentor at any time after the SBA's final decline decision.

(g) *Evaluating the mentor-protégé relationship.* (1) Within 30 days of the anniversary of SBA's approval of the mentor-protégé agreement, the protégé must report to SBA for the preceding year:

(i) All technical and/or management assistance provided by the mentor to the protégé;

(ii) All loans to and/or equity investments made by the mentor in the protégé;

(iii) All subcontracts awarded to the protégé by the mentor and all subcontracts awarded to the mentor by the protégé, and the value of each subcontract;

(iv) All federal contracts awarded to the mentor-protégé relationship as a joint venture (designating each as a small business set-aside, small business reserve, or unrestricted procurement), the value of each contract, and the percentage of the contract performed and the percentage of revenue accruing to each party to the joint venture; and

(v) A narrative describing the success such assistance has had in addressing the developmental needs of the protégé and addressing any problems encountered.

(2) The protégé must report the mentoring services it receives by category and hours.

(3) The protégé must annually certify to SBA whether there has been any change in the terms of the agreement.

(4) SBA will review the protégé's report on the mentor-protégé relationship, and may decide not to approve continuation of the agreement if it finds that the mentor has not provided the assistance set forth in the mentor-protégé agreement or that the assistance has not resulted in any material benefits or developmental gains to the protégé.

(h) *Consequences of not providing assistance set forth in the mentor-protégé agreement.* (1) Where SBA determines that a mentor has not provided to the protégé firm the business development assistance set forth in its mentor-protégé agreement, SBA will notify the mentor of such determination and afford the mentor an opportunity to respond. The mentor must respond within 30 days of the notification, explaining why it has not provided the agreed upon assistance and setting forth a definitive plan as to when it will provide such assistance. If the mentor fails to respond, does not supply adequate reasons for its failure to provide the agreed upon assistance, or does not set forth a definite plan to provide the assistance:

(i) SBA will terminate the mentor-protégé agreement;

(ii) The firm will be ineligible to again act as a mentor for a period of two years from the date SBA terminates the mentor-protégé agreement; and

(iii) SBA may recommend to the relevant procuring agency to issue a stop work order for each federal contract for which the mentor and protégé are performing as a small business joint venture in order to encourage the mentor to comply with its mentor-protégé agreement. Where a protégé firm is able to independently complete performance of any such contract, SBA may recommend to the procuring agency to authorize a substitution of the protégé firm for the joint venture.

(2) SBA may consider a mentor's failure to comply with the terms and conditions of an SBA-approved mentor-protégé agreement as a basis for debarment on the grounds, including but not limited to, that the mentor has not complied with the terms of a public agreement under 2 CFR 180.800(b).

(i) *Results of mentor-protégé relationship.* (1) In order to assess the results of a mentor-protégé relationship upon its completion, the protégé must report to SBA whether it believed the mentor-protégé relationship was beneficial and describe any lasting benefits to the protégé.

(2) Where a protégé does not report the results of a mentor-protégé relationship upon its completion, SBA will not approve a second mentor-protégé relationship either under this section or under § 124.520 of this chapter.

§ 125.10 Mentor-Protégé programs of other agencies.

(a) Except as provided in paragraph (c) of this section, a Federal department or agency may not carry out a mentor-protégé program for small business unless the head of the department or agency submits a plan to the SBA Administrator for the program and the SBA Administrator approves the plan. Before starting a new mentor protégé program, the head of a department or agency must submit a plan to the SBA Administrator. Within one year of the effective date of this section, the head of a department or agency must submit a plan to the SBA for any previously existing mentor-protégé program that the department or agency seeks to continue.

(b) The SBA Administrator will approve or disapprove a plan submitted under paragraph (a) of this section based on whether the proposed program:

(1) Will assist protégés to compete for Federal prime contracts and subcontracts; and

(2) Complies with the provisions set forth in §§ 125.9 and 124.520 of this chapter, as applicable.

(c) Paragraph (a) of this section does not apply to:

(1) Any mentor-protégé program of the Department of Defense;

(2) Any mentoring assistance provided under a Small Business Innovation Research Program or a Small Business Technology Transfer Program; and

(3) A mentor-protégé program operated by a Department or agency on January 2, 2013, for a period of one year after the effective date of this section.

(d) The head of each Federal department or agency carrying out an agency-specific mentor-protégé program must report annually to SBA:

(1) The participants (both protégé firms and their approved mentors) in its mentor-protégé program. This includes identifying the number of participants that are:

(i) Small business concerns;

(ii) Small business concerns owned and controlled by service-disabled veterans;

(iii) Small business concerns owned and controlled by socially and economically disadvantaged individuals;

(iv) Small business concerns owned and controlled by Indian tribes, Alaska Native Corporations, Native Hawaiian Organizations, and Community Development Corporations; and

(v) Small business concerns owned and controlled by women;

(2) The assistance provided to small businesses through the program; and

(3) The progress of protégé firms under the program to compete for Federal prime contracts and subcontracts.

■ 37. Amend newly redesignated § 125.18 by revising paragraph (b) to read as follows:

§ 125.18 What requirements must an SDVO SBC meet to submit an offer on a contract?

* * * * *

(b) *Joint ventures.* An SDVO SBC may enter into a joint venture agreement with one or more other SBCs or its SBA-approved mentor for the purpose of performing an SDVO contract.

(1) *Size of concerns to an SDVO SBC joint venture.* (i) A joint venture of at least one SDVO SBC and one or more other business concerns may submit an offer as a small business for a competitive SDVO SBC procurement or sale, or be awarded a sole source SDVO contract, so long as each concern is small under the size standard corresponding to the NAICS code assigned to the procurement or sale.

(ii) A joint venture between a protégé firm that qualifies as an SDVO SBC and its SBA-approved mentor (*see* §§ 125.9 and 124.520 of this chapter) will be deemed small provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the SDVO procurement or sale.

(2) *Contents of joint venture agreement.* Every joint venture agreement to perform an SDVO contract, including those between a protégé firm that qualifies as an SDVO SBC and its SBA-approved mentor authorized by § 124.520 or § 125.9 of this chapter, must contain a provision:

(i) Setting forth the purpose of the joint venture;

(ii) Designating an SDVO SBC as the managing venturer of the joint venture, and an employee of the SDVO SBC managing venturer as the project manager responsible for performance of the contract;

(iii) Stating that with respect to a separate legal entity joint venture, the SDVO SBC must own at least 51% of the joint venture entity;

(iv) Stating that the SDVO SBC must receive profits from the joint venture commensurate with the work performed by the SDVO SBC, or in the case of a separate legal entity joint venture, commensurate with their ownership interests in the joint venture;

(v) Providing for the establishment and administration of a special bank account in the name of the joint venture. This account must require the signature of all parties to the joint venture or designees for withdrawal purposes. All payments due the joint venture for performance on an SDVO contract will be deposited in the special account; all expenses incurred under the contract will be paid from the account as well;

(vi) Itemizing all major equipment, facilities, and other resources to be furnished by each party to the joint venture, with a detailed schedule of cost or value of each, where practical. If a contract is indefinite in nature, such as an indefinite quantity contract or a multiple award contract where the level of effort or scope of work is not known, the joint venture must provide a general description of the anticipated major equipment, facilities, and other resources to be furnished by each party to the joint venture, without a detailed schedule of cost or value of each, or in the alternative, specify how the parties to the joint venture will furnish such resources to the joint venture once a definite scope of work is made publicly available;

(vii) Specifying the responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, including ways that the parties to the joint venture will ensure that the joint venture and the SDVO small business partner(s) to the joint venture will meet the performance of work requirements set forth in paragraph (b)(3) of this section, where practical. If a contract is indefinite in nature, such as an indefinite quantity contract or a multiple award contract where the level of effort or scope of work is not known, the joint venture must provide a general description of the anticipated responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, not including the ways that the parties to the joint venture will ensure that the joint venture and the SDVO small business partner(s) to the joint venture will meet the performance of work requirements set forth in paragraph (d) of this section, or in the alternative, specify how the parties to the joint venture will define such responsibilities once a definite scope of work is made publicly available;

(viii) Obligating all parties to the joint venture to ensure performance of the SDVO contract and to complete performance despite the withdrawal of any member;

(ix) Designating that accounting and other administrative records relating to the joint venture be kept in the office of the SDVO SBC managing venturer, unless approval to keep them elsewhere is granted by the District Director or his/her designee upon written request;

(x) Requiring that the final original records be retained by the SDVO SBC managing venturer upon completion of the SDVO contract performed by the joint venture;

(xi) Stating that quarterly financial statements showing cumulative contract receipts and expenditures (including salaries of the joint venture's principals) must be submitted to SBA not later than 45 days after each operating quarter of the joint venture; and

(xii) Stating that a project-end profit and loss statement, including a statement of final profit distribution, must be submitted to SBA no later than 90 days after completion of the contract.

(3) *Performance of work.* (i) For any SDVO contract, including those between a protégé and a mentor authorized by § 125.9 or § 124.520 of this chapter, the joint venture must perform the applicable percentage of work required by § 125.6.

(ii) The SDVO SBC partner(s) to the joint venture must perform at least 40% of the work performed by the joint venture.

(A) The work performed by the SDVO SBC partner(s) to a joint venture must be more than administrative or ministerial functions so that they gain substantive experience.

(B) The amount of work done by the partners will be aggregated and the work done by the SDVO SBC partner(s) must be at least 40% of the total done by all partners. In determining the amount of work done by a non-SDVO SBC partner, all work done by the non-SDVO SBC partner and any of its affiliates at any subcontracting tier will be counted.

(4) *Certification of Compliance.* Prior to the performance of any SDVO contract as a joint venture, the SDVO SBC partner to the joint venture must

submit a written certification to the contracting officer and SBA, signed by an authorized official of each partner to the joint venture, stating as follows:

(i) The parties have entered into a joint venture agreement that fully complies with paragraph (b)(2) of this section;

(ii) The parties will perform the contract in compliance with the joint venture agreement and with the performance of work requirements set forth in paragraph (b)(3) of this section.

(5) *Past performance and experience.* When evaluating the past performance and experience of an entity submitting an offer for an SDVO contract as a joint venture established pursuant to this section, a procuring activity must consider work done individually by each partner to the joint venture as well as any work done by the joint venture itself previously.

(6) *Contract execution.* The procuring activity will execute an SDVO contract in the name of the joint venture entity or the SDVO SBC, but in either case will identify the award as one to an SDVO joint venture or an SDVO mentor-protégé joint venture, as appropriate.

(7) *Inspection of records.* The joint venture partners must allow SBA's authorized representatives, including representatives authorized by the SBA Inspector General, during normal business hours, access to its files to inspect and copy all records and documents relating to the joint venture.

(8) *Performance of work reports.* An SDVO SBC partner to a joint venture must describe how it is meeting or has met the applicable performance of work requirements for each SDVO contract it performs as a joint venture.

(i) The SDVO SBC partner to the joint venture must annually submit a report to the relevant contracting officer and to the SBA, signed by an authorized official of each partner to the joint venture, explaining how and certifying that the performance of work requirements are being met.

(ii) At the completion of every SDVO contract awarded to a joint venture, the SDVO SBC partner to the joint venture must submit a report to the relevant contracting officer and to the SBA, signed by an authorized official of each partner to the joint venture, explaining how and certifying that the performance of work requirements were met for the contract, and further certifying that the contract was performed in accordance with the provisions of the joint venture agreement that are required under paragraph (b)(2) of this section.

(9) *Basis for suspension or debarment.* The Government may consider the following as a ground for suspension or debarment as a willful violation of a regulatory provision or requirement applicable to a public agreement or transaction:

(i) Failure to enter a joint venture agreement that complies with paragraph (b)(2) of this section;

(ii) Failure to perform a contract in accordance with the joint venture agreement or performance of work requirements in paragraph (b)(3) of this section; or

(iii) Failure to submit the certification required by paragraph (b)(4) of this section or comply with paragraph (b)(7) of this section.

(10) Any person with information concerning a joint venture's compliance with the performance of work requirements may report that information to SBA and/or the SBA Office of Inspector General.

§ 125.22 [Amended]

■ 38. Amend newly redesignated § 125.22 by adding the phrase ", regardless of the place of performance," in the first sentence of paragraphs (b)(1) and (b)(2)(i) after the words "for small business concerns" and before the words "when there is a reasonable expectation".

PART 126—HUBZONE PROGRAM

■ 39. The authority citation for part 126 is revised to read as follows:

Authority: 15 U.S.C. 632(a), 632(j), 632(p), 644, and 657a; Pub. L. 111–240, 24 Stat. 2504.

■ 40. Amend § 126.306 as follows:

■ a. Revise paragraphs (a) and (b);

■ b. Redesignate paragraphs (c) and (d) as paragraphs (f) and (g), respectively; and

■ c. Add new paragraphs (c), (d) and (e).

The revisions and additions read as follows:

§ 126.306 How will SBA process the certification?

(a) The D/HUB or designee is authorized to approve or decline applications for certification. SBA will receive and review all applications and request supporting documents. SBA must receive all required information, supporting documents, and completed HUBZone representation before it will begin processing a concern's application. SBA will not process incomplete packages. SBA will make its determination within ninety (90) calendar days after receipt of a complete package whenever practicable. The decision of the D/HUB or designee is the final agency decision.

(b) SBA may request additional information or clarification of information contained in an application or document submission at any time.

(c) The burden of proof to demonstrate eligibility is on the applicant concern. If a concern does not provide requested information within the allotted time provided by SBA, or if it submits incomplete information, SBA may presume that disclosure of the missing information would adversely affect the business concern or demonstrate a lack of eligibility in the area or areas to which the information relates.

(d) The applicant must be eligible as of the date it submitted its application and up until and at the time the D/HUB issues a decision. The decision will be based on the facts set forth in the application, any information received in response to SBA's request for clarification, and any changed circumstances since the date of application.

(e) Any changed circumstance occurring after an applicant has submitted an application will be considered and may constitute grounds for decline. After submitting the application and signed representation, an applicant must notify SBA of any changes that could affect its eligibility. The D/HUB may propose decertification for any HUBZone SBC that failed to inform SBA of any changed circumstances that affected its eligibility for the program during the processing of the application.

* * * * *

■ 41. Amend § 126.600 by revising the introductory text to read as follows:

§ 126.600 What are HUBZone contracts?

HUBZone contracts are contracts awarded to a qualified HUBZone SBC, regardless of the place of performance, through any of the following procurement methods:

* * * * *

■ 42. Revise § 126.615 to read as follows:

§ 126.615 May a large business participate on a HUBZone contract?

Except as provided in § 126.618(d), a large business may not participate as a prime contractor on a HUBZone award, but may participate as a subcontractor to an otherwise qualified HUBZone SBC, subject to the contract performance requirements set forth in § 126.700.

■ 43. Revise § 126.616 to read as follows:

§ 126.616 What requirements must a joint venture satisfy to submit an offer on a HUBZone contract?

(a) *General.* A qualified HUBZone SBC may enter into a joint venture agreement with one or more other SBCs, or with an approved mentor authorized by § 125.9 of this chapter (or, if also an 8(a) BD Participant, with an approved mentor authorized by § 124.520 of this chapter), for the purpose of submitting an offer for a HUBZone contract. The joint venture itself need not be certified as a qualified HUBZone SBC.

(b) *Size.* (1) A joint venture of at least one qualified HUBZone SBC and one or more other business concerns may submit an offer as a small business for a HUBZone procurement or sale so long as each concern is small under the size standard corresponding to the NAICS code assigned to the procurement or sale.

(2) A joint venture between a protégé firm and its SBA-approved mentor (*see* § 125.9 of this chapter) will be deemed small provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the HUBZone procurement or sale.

(c) *Contents of joint venture agreement.* Every joint venture agreement to perform a HUBZone contract, including those between a protégé firm that is a certified HUBZone SBC and its SBA-approved mentor authorized by § 124.520 or § 125.9 of this chapter, must contain a provision:

(1) Setting forth the purpose of the joint venture;

(2) Designating a HUBZone SBC as the managing venturer of the joint venture, and an employee of the HUBZone SBC managing venturer as the project manager responsible for performance of the contract. The individual identified as the project manager of the joint venture need not be an employee of the HUBZone SBC at the time the joint venture submits an offer, but, if he or she is not, there must be a signed letter of intent that the individual commits to be employed by the HUBZone SBC if the joint venture is the successful offeror. The individual identified as the project manager cannot be employed by the mentor and become an employee of the HUBZone SBC for purposes of performance under the joint venture;

(3) Stating that with respect to a separate legal entity joint venture, the HUBZone SBC must own at least 51% of the joint venture entity;

(4) Stating that the HUBZone SBC must receive profits from the joint venture commensurate with the work performed by the HUBZone SBC, or in the case of a separate legal entity joint venture, commensurate with their ownership interests in the joint venture;

(5) Providing for the establishment and administration of a special bank account in the name of the joint venture. This account must require the signature of all parties to the joint venture or designees for withdrawal purposes. All payments due the joint venture for performance on a HUBZone contract will be deposited in the special account; all expenses incurred under the contract will be paid from the account as well;

(6) Itemizing all major equipment, facilities, and other resources to be furnished by each party to the joint venture, with a detailed schedule of cost or value of each, where practical. If a contract is indefinite in nature, such as an indefinite quantity contract or a multiple award contract where the level of effort or scope of work is not known, the joint venture must provide a general description of the anticipated major equipment, facilities, and other resources to be furnished by each party to the joint venture, without a detailed schedule of cost or value of each, or in the alternative, specify how the parties to the joint venture will furnish such resources to the joint venture once a definite scope of work is made publicly available;

(7) Specifying the responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, including ways that the parties to the joint venture will ensure that the joint venture and the HUBZone partner(s) to the joint venture will meet the performance of work requirements set forth in paragraph (d) of this section, where practical. If a contract is indefinite in nature, such as an indefinite quantity contract or a multiple award contract where the level of effort or scope of work is not known, the joint venture must provide a general description of the anticipated responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, not including the ways that the parties to the joint venture will ensure that the joint venture and the HUBZone partner(s) to the joint venture will meet the performance of work requirements set forth in paragraph (d) of this section, or in the alternative, specify how the parties to the joint venture will define such responsibilities once a definite scope of work is made publicly available;

(8) Obligating all parties to the joint venture to ensure performance of the HUBZone contract and to complete performance despite the withdrawal of any member;

(9) Designating that accounting and other administrative records relating to the joint venture be kept in the office of the HUBZone SBC managing venturer, unless approval to keep them elsewhere is granted by the District Director or his/her designee upon written request;

(10) Requiring that the final original records be retained by the HUBZone SBC managing venturer upon completion of the HUBZone contract performed by the joint venture;

(11) Stating that quarterly financial statements showing cumulative contract receipts and expenditures (including salaries of the joint venture's principals) must be submitted to SBA not later than 45 days after each operating quarter of the joint venture; and

(12) Stating that a project-end profit and loss statement, including a statement of final profit distribution, must be submitted to SBA no later than 90 days after completion of the contract.

(d) *Limitations on subcontracting.* (1) For any HUBZone contract to be performed by a joint venture between a qualified HUBZone SBC and another qualified HUBZone SBC, the aggregate of the qualified HUBZone SBCs to the joint venture, not each concern separately, must perform the applicable percentage of work required by § 125.6 of this chapter.

(2) For any HUBZone contract to be performed by a joint venture between a qualified HUBZone protégé and a small business concern or its SBA-approved mentor authorized by § 125.9 or § 124.520 of this chapter, the joint venture must perform the applicable percentage of work required by § 125.6 of this chapter, and the HUBZone SBC partner to the joint venture must perform at least 40% of the work performed by the joint venture.

(i) The work performed by the HUBZone SBC partner to a joint venture must be more than administrative or ministerial functions so that it gains substantive experience.

(ii) The amount of work done by the partners will be aggregated and the work done by the HUBZone protégé partner must be at least 40% of the total done by the partners. In determining the amount of work done by a mentor participating in a joint venture with a HUBZone qualified protégé, all work done by the mentor and any of its affiliates at any subcontracting tier will be counted.

(e) *Certification of compliance.* Prior to the performance of any HUBZone contract as a joint venture, the HUBZone SBC partner to the joint venture must submit a written certification to the contracting officer and SBA, signed by an authorized official of each partner to the joint venture, stating as follows:

(i) The parties have entered into a joint venture agreement that fully complies with paragraph (c) of this section;

(ii) The parties will perform the contract in compliance with the joint venture agreement and with the performance of work requirements set forth in paragraph (d) of this section.

(f) *Past performance and experience.* When evaluating the past performance and experience of an entity submitting an offer for a HUBZone contract as a joint venture established pursuant to this section, a procuring activity must consider work done individually by each partner to the joint venture as well as any work done by the joint venture itself previously.

(g) *Contract execution.* The procuring activity will execute a HUBZone contract in the name of the joint venture entity or the HUBZone SBC, but in either case will identify the award as one to a HUBZone joint venture or a HUBZone mentor-protégé joint venture, as appropriate.

(h) *Inspection of records.* The joint venture partners must allow SBA's authorized representatives, including representatives authorized by the SBA Inspector General, during normal business hours, access to its files to inspect and copy all records and documents relating to the joint venture.

(i) *Performance of work reports.* The HUBZone SBC partner to a joint venture must describe how it is meeting or has met the applicable performance of work requirements for each HUBZone contract it performs as a joint venture.

(1) The HUBZone SBC partner to the joint venture must annually submit a report to the relevant contracting officer and to the SBA, signed by an authorized official of each partner to the joint venture, explaining how the performance of work requirements are being met for each HUBZone contract performed during the year.

(2) At the completion of every HUBZone contract awarded to a joint venture, the HUBZone SBC partner to the joint venture must submit a report to the relevant contracting officer and to the SBA, signed by an authorized official of each partner to the joint venture, explaining how and certifying that the performance of work requirements were met for the contract, and further certifying that the contract was performed in accordance with the provisions of the joint venture agreement that are required under paragraph (c) of this section.

(j) *Basis for suspension or debarment.* The Government may consider the following as a ground for suspension or debarment as a willful violation of a regulatory provision or requirement applicable to a public agreement or transaction:

(1) Failure to enter a joint venture agreement that complies with paragraph (c) of this section;

(2) Failure to perform a contract in accordance with the joint venture agreement or performance of work requirements in paragraph (d) of this section; or

(3) Failure to submit the certification required by paragraph (e) of this section or comply with paragraph (h) of this section.

(k) Any person with information concerning a joint venture's compliance with the performance of work requirements may report that information to SBA and/or the SBA Office of Inspector General.

■ 44. Revise § 126.618 to read as follows:

§ 126.618 How does a HUBZone SBC's participation in a Mentor-Protégé relationship affect its participation in the HUBZone Program?

(a) A qualified HUBZone SBC may enter into a mentor-protégé relationship under § 125.9 of this chapter (or, if also an 8(a) BD Participant, under § 124.520 of this chapter) or in connection with a mentor-protégé program of another agency, provided that such relationships do not conflict with the underlying HUBZone requirements.

(b) For purposes of determining whether an applicant to the HUBZone Program or a HUBZone SBC qualifies as small under part 121 of this chapter, SBA will not find affiliation between the applicant or qualified HUBZone SBC and the firm that is its mentor in an SBA-approved mentor-protégé relationship (including a mentor that is other than small) on the basis of the mentor-protégé agreement or the assistance provided to the protégé firm under the agreement. SBA will not consider the employees of the mentor in determining whether the applicant or qualified HUBZone SBC meets (or continues to meet) the 35% HUBZone residency requirement or the principal office requirement, or in determining the size of the applicant or qualified HUBZone SBC for any employee-based size standard.

(c) A qualified HUBZone SBC that is a prime contractor on a HUBZone contract may subcontract work to its mentor.

(1) The HUBZone SBC must meet the applicable performance of work requirements set forth in § 125.6(c) of this chapter.

(2) SBA may find affiliation between a prime HUBZone contractor and its mentor subcontractor where the mentor will perform primary and vital requirements of the contract. *See* § 121.103(h)(4) of this chapter.

PART 127—WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT PROGRAM

■ 45. The authority citation for part 127 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 637(m), 644 and 657r.

§ 127.500 [Amended]

■ 46. Amend § 127.500 by adding the words ", regardless of the place of performance" to the end of the sentence.

■ 47. Amend § 127.506 as follows:

■ a. Revise the section introductory text and paragraph (a), add an italic subject head to paragraph (c) introductory text, and revise paragraphs (c)(2) and (3);

■ b. Redesignate paragraph (c)(4) as (c)(7) and paragraph (c)(5) as (c)(10) respectively;

■ c. Add new paragraphs (c)(4) through (6);

■ d. Revise newly redesignated paragraphs (c)(7) and (c)(10);

■ e. Add paragraphs (c)(8) and (9) and (c)(11) and (12);

■ f. Revise paragraphs (d), (e), and (f); and

■ g. Add paragraphs (g) through (l).

The revisions and additions read as follows:

§ 127.506 May a joint venture submit an offer on an EDWOSB or WOSB requirement?

A joint venture, including those between a protégé and a mentor under § 125.9 of this chapter (or, if also an 8(a) BD Participant, under § 124.520 of this chapter), may submit an offer on a WOSB Program contract if the joint venture meets all of the following requirements:

(a)(1) A joint venture of at least one WOSB or EDWOSB and one or more other business concerns may submit an offer as a small business for a WOSB Program procurement or sale so long as each concern is small under the size standard corresponding to the NAICS code assigned to the procurement or sale.

(2) A joint venture between a protégé firm and its SBA-approved mentor (*see* § 125.9 and § 124.520 of this chapter) will be deemed small provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the WOSB Program procurement or sale.

* * * * *

(c) *Contents of joint venture agreement.* * * *

* * * * *

(2) Designating a WOSB as the managing venturer of the joint venture, and an employee of the WOSB managing venturer as the project manager responsible for performance of the contract. The individual identified as the project manager of the joint venture need not be an employee of the WOSB at the time the joint venture submits an offer, but, if he or she is not, there must be a signed letter of intent that the individual commits to be employed by the WOSB if the joint venture is the successful offeror. The individual identified as the project manager cannot be employed by the mentor and become an employee of the WOSB for purposes of performance under the joint venture;

(3) Stating that with respect to a separate legal entity joint venture, the WOSB must own at least 51% of the joint venture entity;

(4) Stating that the WOSB must receive profits from the joint venture commensurate with the work performed by the WOSB, or in the case of a separate legal entity joint venture, commensurate with their ownership interests in the joint venture;

(5) Providing for the establishment and administration of a special bank account in the name of the joint venture. This account must require the signature of all parties to the joint venture or designees for withdrawal purposes. All payments due the joint venture for performance on a WOSB Program contract will be deposited in the special account; all expenses incurred under the contract will be paid from the account as well;

(6) Itemizing all major equipment, facilities, and other resources to be furnished by each party to the joint venture, with a detailed schedule of cost or value of each, where practical. If a contract is indefinite in nature, such as an indefinite quantity contract or a multiple award contract where the level of effort or scope of work is not known, the joint venture must provide a general description of the anticipated major equipment, facilities, and other resources to be furnished by each party to the joint venture, without a detailed schedule of cost or value of each, or in the alternative, specify how the parties to the joint venture will furnish such resources to the joint venture once a definite scope of work is made publicly available;

(7) Specifying the responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, including ways that the parties to the joint venture will ensure that the joint venture and the WOSB Program participant(s) in the joint venture will meet the performance of work requirements set forth in paragraph (d) of this section, where practical. If a contract is indefinite in nature, such as an indefinite quantity contract or a multiple award contract where the level of effort or scope of work is not known, the joint venture must provide a general description of the anticipated responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, not including the ways that the parties to the joint venture will ensure that the joint venture and the WOSB Program participant(s) in the joint venture will meet the performance of work requirements set forth in paragraph (d) of this section, or in the alternative, specify how the parties to the joint venture will define such responsibilities once a definite scope of work is made publicly available;

(8) Obligating all parties to the joint venture to ensure performance of the WOSB contract and to complete performance despite the withdrawal of any member;

(9) Designating that accounting and other administrative records relating to the joint venture be kept in the office of the WOSB managing venturer, unless approval to keep them elsewhere is granted by the District Director or his/her designee upon written request;

(10) Requiring that the final original records be retained by the WOSB managing venturer upon completion of the WOSB Program contract performed by the joint venture;

(11) Stating that quarterly financial statements showing cumulative contract receipts and expenditures (including salaries of the joint venture's principals) must be submitted to SBA not later than 45 days after each operating quarter of the joint venture; and

(12) Stating that a project-end profit and loss statement, including a statement of final profit distribution, must be submitted to SBA no later than 90 days after completion of the contract.

(d) *Performance of work.* (1) For any WOSB Program contract, the joint venture (including one between a protégé and a mentor authorized by § 125.9 or § 124.520 of this chapter) must perform the applicable percentage of work required by § 125.6 of this chapter.

(2) The WOSB partner(s) to the joint venture must perform at least 40% of the work performed by the joint venture.

(i) The work performed by the WOSB partner(s) to a joint venture must be more than administrative or ministerial functions so that they gain substantive experience.

(ii) The amount of work done by the partners will be aggregated and the work done by the WOSB partner(s) must be at least 40% of the total done by all partners. In determining the amount of work done by the non-WOSB partner, all work done by the non-WOSB partner and any of its affiliates at any subcontracting tier will be counted.

(e) *Certification of compliance.* Prior to the performance of any WOSB Program contract as a joint venture, the WOSB Program participant in the joint venture must submit a written certification to the contracting officer and SBA, signed by an authorized official of each partner to the joint venture, stating as follows:

(i) The parties have entered into a joint venture agreement that fully complies with paragraph (c) of this section;

(ii) The parties will perform the contract in compliance with the joint venture agreement and with the performance of work requirements set forth in paragraph (d) of this section.

(f) *Past performance and experience.* When evaluating the past performance and experience of an entity submitting an offer for a WOSB Program contract as a joint venture established pursuant to this section, a procuring activity must consider work done individually by each partner to the joint venture as well as any work done by the joint venture itself previously.

(g) *Contract execution.* The procuring activity will execute a WOSB Program contract in the name of the joint venture entity or the WOSB, but in either case will identify the award as one to a WOSB Program joint venture or a WOSB Program mentor-protégé joint venture, as appropriate.

(h) *Submission of joint venture agreement.* The WOSB Program participant must provide a copy of the joint venture agreement to the contracting officer.

(i) *Inspection of records.* The joint venture partners must allow SBA's authorized representatives, including representatives authorized by the SBA Inspector General, during normal business hours, access to its files to inspect and copy all records and documents relating to the joint venture.

(j) *Performance of work reports.* The WOSB Program participant in the joint venture must describe how it is meeting or has met the applicable performance of work requirements for each WOSB Program contract it performs as a joint venture.

(1) The WOSB partner to the joint venture must annually submit a report to the relevant contracting officer and to the SBA, signed by an authorized

official of each partner to the joint venture, explaining how the performance of work requirements are being met for each WOSB Program contract performed during the year.

(2) At the completion of every WOSB Program contract awarded to a joint venture, the WOSB partner to the joint venture must submit a report to the relevant contracting officer and to the SBA, signed by an authorized official of each partner to the joint venture, explaining how and certifying that the performance of work requirements were met for the contract, and further certifying that the contract was performed in accordance with the provisions of the joint venture agreement that are required under paragraph (c) of this section.

(k) *Basis for suspension or debarment.* The Government may consider the following as a ground for suspension or debarment as a willful violation of a regulatory provision or requirement applicable to a public agreement or transaction:

(1) Failure to enter a joint venture agreement that complies with paragraph (c) of this section;

(2) Failure to perform a contract in accordance with the joint venture agreement or performance of work requirements in paragraph (d) of this section; or

(3) Failure to submit the certification required by paragraph (e) or comply with paragraph (i) of this section.

(l) Any person with information concerning a joint venture's compliance with the performance of work requirements may report that information to SBA and/or the SBA Office of Inspector General.

PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

■ 48. The authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), 637(a), 648(l), 656(i), and 687(c); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

■ 49. Amend § 134.227 by revising paragraph (c) to read as follows:

§ 134.227 Finality of decisions.

* * * * *

(c) *Reconsideration.* Except as otherwise provided by statute, the applicable program regulations in this chapter, or this part 134, an initial or final decision of the Judge may be reconsidered. Any party in interest, including SBA where SBA did not appear as a party during the proceeding that led to the issuance of the Judge's decision, may request reconsideration by filing with the Judge and serving a petition for reconsideration within 20 days after service of the written decision, upon a clear showing of an error of fact or law material to the decision. The Judge also may reconsider a decision on his or her own initiative.

■ 50. Amend § 134.406 by revising paragraph (b) to read as follows:

§ 134.406 Review of the administrative record.

* * * * *

(b) Except in suspension appeals, the Administrative Law Judge's review is limited to determining whether the Agency's determination is arbitrary, capricious, or contrary to law. As long as the Agency's determination is not arbitrary, capricious or contrary to law, the Administrative Law Judge must uphold it on appeal.

(1) The Administrative Law Judge must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.

(2) If the SBA's path of reasoning may reasonably be discerned, the Administrative Law Judge will uphold a decision of less than ideal clarity.

* * * * *

§ 134.501 [Amended]

■ 51. Amend § 134.501 by removing "§ 125.26" from paragraph (a) and by adding "§ 125.29" in its place.

§ 134.515 [Amended]

■ 52. Amend § 134.515 by removing "13 CFR 125.28" from paragraph (a) and by adding "§ 125.31 of this chapter" in its place.

Dated: July 1, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–16399 Filed 7–22–16; 8:45 am]

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Part IV

Department of Education

34 CFR Parts 600 and 668
Program Integrity and Improvement; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 600 and 668

[Docket ID ED–2016–OPE–0050]

RIN 1840–AD20

Program Integrity and Improvement

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the State authorization sections of the Institutional Eligibility regulations issued under the Higher Education Act of 1965, as amended (HEA). In addition, the Secretary proposes to amend the Student Assistance General Provisions regulations issued under the HEA, including the addition of a new section on required institutional disclosures for distance education and correspondence courses.

DATES: We must receive your comments on or before August 24, 2016.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

If you are submitting comments electronically, we strongly encourage you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Document Format (PDF), we strongly encourage you to convert the PDF to print-to-PDF format or to use some other commonly used searchable text format. *Please do not submit the PDF in a scanned format.* Using a print-to-PDF format allows the Department of Education (Department) to electronically search and copy certain portions of your submissions.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "help" tab.
- *Postal Mail, Commercial Delivery, or Hand Delivery:* The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments about the proposed regulations, address them to Sophia McArdle, U.S. Department of Education, 400 Maryland Ave. SW., Room 6W256, Washington, DC 20202. Scott Filter, U.S. Department of Education, 400 Maryland Ave. SW., Room 6W253, Washington, DC 20202.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Sophia McArdle, U.S. Department of Education, 400 Maryland Ave. SW., Room 6W256, Washington, DC 20202. Telephone (202) 453–6318 or by email at: *sophia.mcardle@ed.gov*. Scott Filter, U.S. Department of Education, 400 Maryland Ave. SW., Room 6W253, Washington, DC 20202. Telephone (202) 453–7249 or by email at: *scott.filter@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action: This regulatory action establishes requirements for institutional eligibility to participate in title IV, HEA programs. These financial aid programs are the Federal Pell Grant program, the Federal Supplemental Educational Opportunity Grant, the Federal Work-Study program, the Teacher Education Assistance for College and Higher Education (TEACH) Grant program, Federal Family Educational Loan Program, and the William D. Ford Direct Loan program.

The HEA established what is commonly known as the program integrity "triad" under which States, accrediting agencies, and the Department act jointly as gatekeepers for the Federal student aid programs mentioned above. This triad has been in existence since the inception of the HEA; and as an important component of this triad, the HEA requires institutions of higher education to obtain approval from the States in which they provide postsecondary educational programs. This requirement recognizes the important oversight role States play in protecting students, their families, taxpayers, and the general public as a whole.

The Department established regulations in 2010 to clarify the minimum standards of State authorization that an institution must demonstrate in order to establish eligibility to participate in title IV programs. While the regulations established in 2010 made clear that all eligible institutions must have State authorization in the States in which they are physically located, the U.S. Court of Appeals for the District of Columbia set aside the Department's regulations regarding authorization of distance education programs or correspondence courses, and the regulations did not address additional locations or branch campuses located in foreign locations. As such, these proposed regulations would clarify the State authorization requirements an institution must comply with in order to be eligible to participate in title IV programs, ending uncertainty with respect to State authorization and closing any gaps in State oversight to ensure students, families and taxpayers are protected.

The Office of the Inspector General (OIG), the Government Accountability Office (GAO), and others have voiced concerns over fraudulent practices, issues of non-compliance with requirements of the title IV programs, and other challenges within the distance education environment. Such practices and challenges include misuse of title IV funds, verification of student identity, and gaps in consumer protections for students. The clarified requirements related to State authorization will support the integrity of the title IV, HEA programs by permitting the Department to withhold title IV funds from institutions that are not authorized to operate in a given State.

Because institutions that offer distance education programs usually offer the programs in multiple States, there are unique challenges with respect to oversight of these programs by State and other agencies.

Many States and stakeholders have expressed concerns with these unique challenges, especially those related to ensuring adequate consumer protections for students as well as compliance by institutions participating in this sector. For example, some States have expressed concerns over their ability to identify what out of State providers are operating in their States, whether those programs prepare their students for employment, including meeting licensure requirements in those States, the academic quality of programs offered by those providers, as well as the ability to receive, investigate and address student complaints about out-of-State institutions.

One stakeholder provided an example of a student in California who enrolled in an online program offered by an institution in Virginia, but then informed the institution of her decision to cancel her enrollment agreement. Four years later, that student was told that her wages would be garnished if she did not begin making monthly payments on her debt to the institution. Although the State of California had a cancellation law that may have been beneficial to the student, that law did not apply due to the institution's lack of physical presence in the State. According to the stakeholder, the Virginia-based institution was also exempt from oversight by the appropriate State oversight agency, making it problematic for the student to voice a complaint or have any action taken on it.

Documented wrong-doing has been reflected in the actions of multiple State attorneys general who have filed lawsuits against online education providers due to misleading business tactics. For example, the attorney general of Iowa settled a case against a distance education provider for misleading Iowa students because the provider stated that their educational programs would qualify a student to earn teacher licensure, which the programs did not lead to.

As such, this regulatory action also establishes requirements for institutional disclosures to prospective and enrolled students in programs offered through distance education or correspondence courses, which we believe will protect students by providing them with important information that will influence their attendance in distance education programs or correspondence courses as well as improve the efficacy of State-based consumer protections for students. Since distance education may involve multiple States, authorization requirements among States may differ, and students may be unfamiliar with or fail to receive information about complaint processes, licensure requirements, or other requirements of authorities in States in which they do not reside.

These disclosures will provide consistent information necessary to safeguard students and taxpayer investments in the title IV, HEA programs. By requiring disclosures that reflect actions taken against a distance education program, how to lodge complaints against a program they believe has misled them, and whether the program will lead to certification or licensure will provide enrolled and prospective students with important information that will protect them.

Summary of the Major Provisions of This Regulatory Action: The proposed regulations would—

- Require an institution offering distance education or correspondence courses to be authorized by each State in which the institution enrolls students, if such authorization is required by the State, in order to link State authorization of institutions offering distance education to institutional eligibility to participate in title IV programs, including through a State authorization reciprocity agreement.
- Define the term "State authorization reciprocity agreement" to be an agreement between two or more States that authorizes an institution located and legally authorized in a State covered by the agreement to provide postsecondary education through distance education or correspondence courses to students in other States covered by the agreement.
- Require an institution to document the State process for resolving complaints from students enrolled in programs offered through distance education or correspondence courses.
- Require that an additional location or branch campus located in a foreign location be authorized by an appropriate government agency of the country where the additional location or branch campus is located and, if at least half of an educational program can be completed at the location or branch campus, be approved by the institution's accrediting agency and be reported to the State where the institution's main campus is located.
- Require that an institution provide public and individualized disclosures to enrolled and prospective students regarding its programs offered solely through distance education or correspondence courses.

Costs and Benefits

The proposed regulations support States in their efforts to develop standards and increase State accountability for a significant sector of higher education—the distance education sector. In 2014, over 2,800,000 students were enrolled in over 23,000 separate distance education programs. The potential primary benefits of the proposed regulations are: (1) Increased transparency and access to institutional/program information through additional disclosures, (2) updated and clarified requirements for State authorization of distance education and foreign additional locations, and (3) a process for students to access complaint resolution in either the State in which the institution is authorized or the State in which they reside. The clarified requirements related to State authorization also support the integrity of the title IV, HEA programs by permitting the Department to withhold title IV funds from institutions that are not authorized to operate in a given State. Institutions that choose to offer distance education will incur costs in complying with State authorization requirements as well as costs associated with the disclosures that would be required by the proposed regulations.

Invitation to Comment: We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses, and provide relevant information and data, as well as other supporting materials in the request for comment, even when there is no specific solicitation of data. We also urge you to arrange your comments in the same order as the proposed regulations. Please do not submit comments outside the scope of the specific proposed regulations in this notice of proposed rulemaking, as we are not required to respond to comments that are outside of the scope of the proposed rule. See **ADDRESSES:** for instructions on how to submit comments.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from the proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about the proposed regulations by accessing *Regulations.gov.* You may also inspect the comments in person in Room 6C105, 400 Maryland Ave. SW., Washington, DC, between 8:30 a.m. and 4 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. If you want to schedule time to inspect comments, please contact the individuals listed under **FOR FURTHER INFORMATION CONTACT.**

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Public Participation

On May 1, 2012, we published a document in the **Federal Register** (77 FR 25658) announcing our intent to establish a negotiated rulemaking committee under section 492 of the HEA to develop proposed regulations designed to prevent fraud and otherwise ensure proper use of title IV of the HEA, Federal student aid program funds, especially within the context of current technologies. On April 16, 2013, we published a document in the **Federal Register** (78 FR 22467), which we corrected on April 30, 2013 (78 FR 25235), announcing additional topics for consideration for action by a negotiated rulemaking committee. The following topics for consideration were identified: Cash management of funds provided under the title IV Federal Student Aid programs; State authorization for programs offered through distance education or correspondence education; State authorization for foreign locations of institutions located in a State; clock-to-credit- hour conversion; gainful employment; changes to the campus safety and security reporting requirements in the Clery Act made by the Violence Against Women Act; and the definition of "adverse credit" for borrowers in the Federal Direct PLUS Loan program. In that notice, we announced three public hearings at which interested parties could comment on the topics suggested by the Department and could suggest additional topics for consideration for action by a negotiated rulemaking committee. We also invited parties unable to attend a public hearing to submit written comments on the additional topics and to submit other topics for consideration. On May 13, 2013, we announced in the **Federal Register** (78 FR 27880) the addition of a fourth hearing. The hearings were held on May 21, 2013, in Washington, DC; May 23, 2013, in Minneapolis, Minnesota; May 30, 2013, in San Francisco, California; and June 4, 2013, in Atlanta, Georgia. Transcripts from the public hearings are available at *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/index.html.* Written comments submitted in response to the April 16, 2013, document may be viewed through the Federal eRulemaking Portal at *www.regulations.gov,* within docket ID ED–2012–OPE–0008. Instructions for finding comments are also available on the site under the "help" tab.

Negotiated Rulemaking

Section 492 of the HEA, 20 U.S.C. 1098a, requires the Secretary to obtain public involvement in the development of proposed regulations affecting programs authorized by title IV of the HEA. After obtaining advice and recommendations from the public, including individuals and representatives of groups involved in the title IV, HEA programs, in most cases the Secretary must subject the proposed regulations to a negotiated rulemaking process. If negotiators reach consensus on the proposed regulations, the Department agrees to publish without alteration a defined group of regulations on which the negotiators reached consensus unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreement reached during negotiations. Further information on the negotiated rulemaking process can be found at: *http://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html.*

On November 20, 2013, we published a document in the **Federal Register** (78 FR 69612) announcing our intent to establish a negotiated rulemaking committee to prepare proposed regulations to address program integrity and improvement issues for the Federal Student Aid programs authorized under title IV of the HEA. That document set forth a schedule for the committee meetings and requested nominations for individual negotiators to serve on the negotiating committee.

The Department sought negotiators to represent the following groups: Students; legal assistance organizations that represent students; consumer advocacy organizations; State higher education executive officers; State attorneys general and other appropriate State officials; business and industry; institutions of higher education eligible to receive Federal assistance under title III, parts A, B, and F and title V of the HEA, which include Historically Black Colleges and Universities (HBCUs), Hispanic-Serving Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, Predominantly Black Institutions, and other institutions with a substantial enrollment of needy students as defined in title III of the HEA; two-year public institutions of higher education; four-year public institutions of higher education; private, non-profit institutions of higher education; private, for-profit institutions of higher education; regional accrediting agencies; national accrediting agencies; specialized accrediting agencies; financial aid administrators at postsecondary institutions; business officers and bursars at postsecondary institutions; admissions officers at postsecondary institutions; institutional third-party servicers who perform functions related to the title IV Federal Student Aid programs (including collection agencies); State approval agencies; and lenders, community banks, and credit unions. The Department considered the nominations submitted by the public and chose negotiators who would represent the various constituencies.

The negotiating committee included the following members:

Chris Lindstrom, U.S. Public Interest Research Group, and Maxwell John Love (alternate), United States Student Association, representing students.

Whitney Barkley, Mississippi Center for Justice, and Toby Merrill (alternate), Project on Predatory Student Lending, The Legal Services Center, Harvard Law School, representing legal assistance organizations that represent students.

Suzanne Martindale, Consumers Union, representing consumer advocacy organizations. Carolyn Fast, Consumer Frauds and Protection Bureau, New York Attorney General's Office, and Jenny Wojewoda (alternate), Massachusetts Attorney General's Office representing State attorneys general and other appropriate State officials.

David Sheridan, School of International & Public Affairs, Columbia University in the City of New York, and Paula Luff (alternate), DePaul University, representing financial aid administrators.

Gloria Kobus, Youngstown State University, and Joan Piscitello (alternate), Iowa State University, representing business officers and bursars at postsecondary institutions.

David Swinton, Benedict College, and George French (alternate), Miles College, representing minority serving institutions.

Brad Hardison, Santa Barbara City College, and Melissa Gregory (alternate), Montgomery College, representing two-year public institutions.

Chuck Knepfle, Clemson University, and J. Goodlett McDaniel (alternate), George Mason University, representing four-year public institutions.

Elizabeth Hicks, Massachusetts Institute of Technology, and Joe Weglarz (alternate), Marist College, representing private, nonprofit institutions.

Deborah Bushway, Capella University, and Valerie Mendelsohn (alternate), American

Career College, representing private, for-profit institutions.

Casey McGuane, Higher One, and Bill Norwood (alternate), Heartland Payment Systems, representing institutional third-party servicers.

Russ Poulin, WICHE Cooperative for Educational Technologies, and Marshall Hill (alternate), National Council for State Authorization Reciprocity Agreements, representing distance education providers.

Dan Toughey, TouchNet, and Michael Gradisher (alternate), Pearson Embanet, representing business and industry.

Paul Kundert, University of Wisconsin Credit Union, and Tom Levandowski (alternate), Wells Fargo Bank Law Department, Consumer Lending & Corporate Regulatory Division, representing lenders, community banks, and credit unions.

Leah Matthews, Distance Education and Training Council, and Elizabeth Sibolski (alternate), Middle States Commission on Higher Education, representing accrediting agencies.

Carney McCullough, U.S. Department of Education, representing the Department.

Pamela Moran, U.S. Department of Education, representing the Department.

The negotiated rulemaking committee met to develop proposed regulations on February 19–21, 2014, March 26–28, 2014, and April 23–25, 2014. During the March session, the Department proposed adding a negotiated rulemaking session to the schedule to give the negotiators more time to consider the issues and reach consensus on proposed regulatory language. The negotiators agreed to add a fourth and final session. On April 11, 2014, we published in the **Federal Register** (79 FR 20139) a document announcing the addition of a fourth session. That final session was held on May 19–20, 2014.

At its first meeting, the negotiating committee reached agreement on its protocols and proposed agenda. These protocols provided, among other things, that the committee would operate by consensus. Consensus means that there must be no dissent by any member in order for the committee to have reached agreement. Under the protocols, if the committee reached a final consensus on all issues, the Department would use the consensus-based language in its proposed regulations. Furthermore, the Department would not alter the consensus-based language of its proposed regulations unless the Department reopened the negotiated rulemaking process or provided a written explanation to the committee members regarding why it decided to depart from that language.

During the first meeting, the negotiating committee agreed to negotiate an agenda of six issues related to student financial aid. These six issues were: Clock-to-credit-hour conversion; State authorization of distance education; State authorization of foreign locations of domestic institutions; cash management; retaking coursework; and PLUS loan adverse credit history. Under the protocols, a final consensus would have to include consensus on all six issues, which was not achieved in these negotiations. If consensus were reached, we would have been required to propose the agreed upon language. As it was not reached, there is no such requirement; the Department has discretion with regard to the regulations it proposes on the negotiated issues.

Significant Proposed Regulations: We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

§ 600.2 Definitions

State Authorization Reciprocity Agreement

Statute: Section 101(a)(2) of the HEA defines the term "institution of higher education" to mean, in part, an educational institution in any State that is legally authorized within the State to provide a program of education beyond secondary education. Section 102(a) of the HEA provides, by reference to section 101(a)(2) of the HEA, that a proprietary institution of higher education and a postsecondary vocational institution must be similarly authorized within a State.

Current Regulations: None.

Proposed Regulations: The Department proposes to add under § 600.2 a definition of a "State authorization reciprocity agreement". The Department proposes to define a State authorization reciprocity agreement as an agreement between two or more States that authorizes an institution located and legally authorized in a State covered by the agreement to provide postsecondary education through distance education or correspondence courses to students in other States covered by the agreement and does not prohibit a participating State from enforcing its own consumer protection laws.

Reasons: The HEA requires that an institution be legally authorized in States to provide a program of education beyond secondary education for purposes of institutional eligibility for funding under the HEA. One way a State could authorize an institution that provides postsecondary education through distance education or correspondence courses to students in that State is to enter into a reciprocity agreement with the State where the institution providing that educational program is located. Such an agreement can provide institutions located in participating States with greater ease by which to achieve State authorization in multiple States. However, we strongly believe that a State should be active in protecting its own students, and therefore such agreements should not prohibit a participating State from enforcing its own consumer protection laws. Thus, any reciprocity agreement that would prohibit a participating State from enforcing its own consumer protection laws would not comply with our proposed definition of a State authorization reciprocity agreement, nor meet the requirements for State authorization under 34 CFR 600.9.

§ 600.9 State Authorization

State Authorization of Distance or Correspondence Education Providers

Statute: Section 101(a)(2) of the HEA defines the term "institution of higher education" to mean, in part, an educational institution in any State that is legally authorized within the State to provide a program of education beyond secondary education. Section 102(a) of the HEA provides, by reference to section 101(a)(2) of the HEA, that a proprietary institution of higher education and a postsecondary vocational institution must be similarly authorized within a State.

Current Regulations: Following negotiations that occurred in 2010 on a number of program integrity issues, the Department promulgated a regulation in § 600.9(c) regarding the State authorization of institutions providing distance education programs (75 FR 66832). On July 12, 2011, in response to a legal challenge by the Association of Private Sector Colleges and Universities, the U.S. District Court for the District of Columbia vacated § 600.9(c) on procedural grounds. On August 14, 2012, on appeal, the U.S. Court of Appeals for the D.C. Circuit ruled that § 600.9(c) was not a logical outgrowth of the Department's proposed rules published at 75 FR 34806 (June 18, 2010) and vacated the regulation. Therefore the Department needed to go through a new rulemaking and public comment process.

The vacated regulations under § 600.9(c) had provided that, if an institution is offering postsecondary education through distance or correspondence education to students in a State in which it is not physically located, or in which it is otherwise subject to State jurisdiction as determined by the State, the institution would be required to meet any State requirements in order to legally offer postsecondary distance or correspondence education in that State. Furthermore, an institution was required to be able to provide, upon request, documentation of the State's approval for the distance or correspondence education to the Secretary.

Proposed Regulations: Under proposed § 600.9(c)(1)(i), an institution described under § 600.9(a)(1) that offers postsecondary education through distance education or correspondence courses to students in a State in which it is not physically located or in which it is otherwise subject to State jurisdiction as determined by the State, except as provided in § 600.9(c)(1)(ii), would need to meet any State requirements in order to legally offer postsecondary distance or correspondence education in that State. An institution would be required to document to the Secretary the State's approval upon request.

Under proposed § 600.9(c)(1)(ii), if an institution described under § 600.9(a)(1) offers postsecondary education through distance education or correspondence courses in a State that participates in a State authorization reciprocity agreement, and the institution offering the program is located in a State where it is covered by such an agreement, the institution would be considered to be legally authorized to offer postsecondary distance or correspondence education in the State students enrolled in the program reside, subject to any limitations in that agreement. An institution would be required to document its coverage under such an agreement to the Secretary upon request.

In addition, under proposed § 600.9(c)(2)(i), if an institution described under § 600.9(a)(1) is offering postsecondary education through distance education or correspondence courses to students residing in a State in which it is not physically located, in order for the institution to be considered legally authorized in that State, the institution would be required to document that there is a State process in each State in which its enrolled students reside to review and take appropriate action on complaints from any of those enrolled students concerning the institution, including enforcing applicable State law. Alternatively, under § 600.9(c)(2)(ii), an institution could document that it was covered under a State authorization reciprocity agreement which included a process, in either the States in which students reside or the State in which the institution's main campus, as identified by the Department of Education and the institution's accrediting agency, is located, to review and take appropriate action on complaints from any of those enrolled students concerning the institution.

Reasons: These proposed regulations would operationalize the requirement in the HEA that an institution described in § 600.9(a)(1) be legally authorized in a State to provide a program of education beyond secondary education for purposes of institutional eligibility for funding under the HEA in the case of institutions providing distance education or correspondence courses in States that have State authorization requirements. It is reasonable to expect that, if a State has requirements regarding its approval for an institution to offer postsecondary educational programs through distance education or correspondence courses in the State, then an institution would have to meet those State requirements to be considered legally authorized to operate in that State for purposes of institutional eligibility for funding under the HEA and that the institution would be able to demonstrate that it has met those requirements. Similarly, in the case where a State is participating in a State authorization reciprocity agreement, an institution described in § 600.9(a)(1) that participates in such agreement should be able to meet any requirements of such an agreement to be considered legally authorized to operate in a State and to demonstrate that it meets those requirements.

We have previously stated that, with respect to institutions subject to 34 CFR 600.9(a), State authorization for an institution must include a process where the State reviews and appropriately acts on complaints arising under State law (75 FR 66865–66, Oct. 29, 2010). We further clarified in Dear Colleague Letter GEN–14–04 that, while a State may refer the review of complaints concerning an institution to another entity, the final authority to ensure that complaints are resolved timely is with the State. Similarly, we believe that States should also play an important role in the protection of students who enroll in postsecondary educational programs provided through distance education or correspondence courses. Therefore, just like institutions physically located in a State, in order for an institution offering postsecondary educational programs through distance education or correspondence courses to students residing in one or more States in which the institution is not physically located to be considered legally authorized in those States, the institution would need to document that there is a State complaint process in each State in which the students reside. This State process must include steps to review and appropriately act in a timely manner on complaints by any of those students concerning the institution, including enforcing applicable State law. Students enrolled in programs offered through distance education or correspondence courses would therefore be able to access a complaint process under both current § 600.9(a)(1), which requires a process in the State in which the institution is physically located, and proposed § 600.9(c)(2), which requires a process in a student's State of residence. Because a State authorization reciprocity agreement may also designate a State process for these complaints, an institution could alternatively show that it was covered by that agreement's process for resolving complaints.

State Authorization of Foreign Additional Locations and Branch Campuses of Domestic Institutions

Statute: Sections 101(a)(2), 102(a)(1), 102(b)(1)(B), and 102(c)(1)(B) of the HEA require an educational institution to be legally authorized in a State to provide a program of education beyond secondary education in order to be eligible to apply to participate in programs approved under the HEA, unless an institution meets the definition of a foreign institution.

Current Regulations: Although the State authorization regulations in current §§ 600.4(a)(3), 600.5(a)(4), 600.6(a)(3), and 600.9 delineate the requirements for State authorization of institutions, they do not specifically address State authorization requirements for foreign locations of domestic institutions.

Proposed Regulations: The proposed regulations would specify the requirements for State authorization of foreign additional locations and branch campuses of domestic institutions.

Proposed § 600.9(d)(1) would specify the requirements for legal authorization for any foreign additional location at which a student can complete 50 percent or more of an educational program, and for any foreign branch campus. Proposed § 600.9(d)(1)(i) would require these additional locations and branch campuses to be legally authorized to operate by an appropriate government authority in the country where the foreign additional location or branch campus is physically located, unless the additional location or branch campus is located on a U.S. military base and is exempt from obtaining such authorization from the foreign country.

Under proposed § 600.9(d)(1)(ii), an institution would be required to provide documentation of that authorization by the foreign country to the Department upon request. The documentation would be required to demonstrate that the government authority for the foreign country is aware that the additional location or branch campus provides postsecondary education and does not object to those activities. In addition, proposed § 600.9(d)(1)(iii) would require these additional locations and branch campuses to be approved in accordance with the existing regulations for the approval of additional locations and branch campuses in the regulations for the Secretary's recognition of accrediting agencies (§ 602.24(a) and § 602.22(a)(2)(viii)). Proposed § 600.9(d)(1)(iv) would require institutions to be in compliance with any additional requirements for legal authorization established by the foreign country. Proposed § 600.9(d)(1)(v) would specify that an institution would be required to report the establishment or operation of a foreign additional location or branch campus to the State in which the main campus of the institution is located at least annually, or more frequently if required by the State. Although these regulations would not require an institution to obtain authorization in the State in which the main campus is located for the foreign additional location or branch campus, § 600.9(d)(1)(vi) would require the institution to comply with any limitations on the establishment or operation of a foreign additional location or branch campus set by that State.

Proposed § 600.9(d)(2) would require that foreign additional locations at which less than 50 percent of an educational program is offered, or will be offered, be in compliance with any requirements for legal authorization established by the foreign country.

Proposed § 600.9(d)(3) would provide that an institution must disclose to enrolled and prospective students the information regarding the student complaint process described in § 668.43(b), in accordance with 34 CFR 668.41 and would be satisfied by making this information available to prospective and enrolled students on the institution's Web site, which would then make it available to the general public. The requirement would apply to all foreign additional locations and branch campuses where students are attending and receiving title IV funds, regardless of the amount of the program offered there.

Proposed § 600.9(d)(4) would make clear that if the State in which the main campus of the institution is located limits the authorization of the institution to exclude the foreign additional location or branch campus, the foreign additional location or branch campus would not be considered to be authorized regardless of the percentage of the program offered at a foreign additional location or branch campus.

Reasons: The negotiating committee reached tentative agreement on the proposed regulations related to additional locations or branch campuses in a foreign location. The Department did not make substantive changes to the regulatory language to which the committee tentatively agreed.

The proposed regulations would allow an institution with a foreign additional location or branch campus to meet the statutory State authorization requirement for the foreign location or branch campus in a manner that recognizes both the domestic control of the institution as a whole, while ensuring that the foreign location or branch campus is legally operating in the foreign country in which it is located. In addition, the proposed regulations would recognize the importance of extending the protections provided to U.S. students attending an institution in a State to those attending at a foreign additional location or branch campus.

The proposed regulations would only apply to foreign additional locations and branch campuses of domestic institutions. They would not apply to study abroad arrangements that domestic institutions have with foreign institutions whereby a student attends a portion of a program at a separate foreign institution, which are regulated under current § 668.5. These proposed regulations also would not apply to foreign institutions. The requirements for additional locations of foreign institutions are contained in current § 600.54(d).

Proposed § 600.9(d)(1) would limit the applicability of the proposed legal authorization and accreditation requirements to (1) foreign additional locations at which 50 percent or more of an educational program is offered, or will be offered, and (2) all foreign branch campuses. This is consistent with current § 600.10(b)(3) which provides that, generally, title IV eligibility does not automatically extend to any branch campus or additional location where the institution provides at least 50 percent of the educational program, so institutions are required to apply for separate approval of such locations under current § 600.20. It would also be consistent with current § 602.24(a), which requires accrediting agencies to approve the addition of branch campuses, and current § 602.22(a)(2)(viii), which generally requires accrediting agencies to have substantive change policies that include the evaluation of additional locations that provide at least 50 percent of a program, unless the location meets certain exceptions.

Because of the protections provided by State authorization of the main campus of an institution and accrediting agency oversight, the proposed legal authorization standard for foreign additional locations and branch campuses in § 600.9(d)(1)(i), (ii) and (iv) is more lenient than the standard for foreign schools, which provides that legal authorization must be obtained from the education ministry, council, or equivalent agency of the country in which the institution is located to provide an educational program beyond the secondary education level. Under the proposed regulations, a license for an additional location of a U.S. based postsecondary educational institution to operate from an appropriate foreign government authority would be sufficient to demonstrate compliance with § 600.9(d)(1)(i). In addition, unlike foreign schools, which must provide documentation of legal authorization up front, § 600.9(d)(1)(ii) would require that the institution provide documentation of the authorization by the foreign country in which the additional location or branch campus is located *upon request* to demonstrate that the government authority for the foreign country is aware that the additional location or branch provides postsecondary education and does not object to the institution's activities. This would allow the Department to ensure that a foreign additional location or branch campus actually has the appropriate authorization to operate. It would also demonstrate that a foreign additional location or branch campus is not operating under a license for a purpose other than providing postsecondary education and, therefore, is in compliance with section 101(a)(2) of the HEA, which defines the term "institution of higher education" to mean, in part, an educational institution in any State that is legally authorized within the State to provide a program of education beyond secondary education. The proposed regulations would require that the government authority for the foreign country is aware that the additional location or branch provides postsecondary education. Although the Department originally proposed requiring an institution to demonstrate that the government entity had actively consented to the location's or branch's provision of postsecondary education, again because of the protections provided by State authorization of the main campus of an institution and accrediting agency oversight, the committee ultimately agreed that it was only necessary that the foreign government entity not object to it.

Some negotiators suggested that State authorization of the institution's main campus and compliance with the accreditation requirements for a foreign additional location or branch campus was sufficient for the location or branch campus to be title IV eligible. However, the negotiated rulemaking committee discussed and tentatively agreed that this standard did not provide enough protection for students who would be harmed if a country sought to close an additional location or branch campus that it had not authorized to operate. For this same reason, proposed § 600.9(d)(1)(iv) would require that foreign additional locations and branch campuses be in compliance with any additional requirements for legal authorization established by the foreign country. While the committee agreed that it was not necessary that the specific legal authorization requirements of proposed § 600.9(d)(1)(i) and (ii) would apply to foreign additional locations at which less than 50 percent of an educational program is offered, or will be offered (discussed above), the committee agreed that proposed § 600.9(d)(2) would require that foreign additional locations at which less than 50 percent of an educational program is offered, or will be offered, be in compliance with any requirements for legal authorization established by the foreign country.

Under the proposed regulations, a foreign additional location or branch campus that is located on a U.S. military base and is exempt from obtaining legal authorization from the foreign country would be exempt from being legally authorized to operate by an appropriate government authority in the country where the additional location or branch campus is physically located. Although some negotiators suggested that all additional locations or branch campuses located on U.S. military bases should be exempt from the laws and regulations of the countries in which they are located because they are considered to be located on "U.S. soil," the Department's understanding is that U.S. military bases are not automatically considered to be located on "U.S. soil." Rather, they are governed by individual Status of Forces Agreements and vary by country and base. These regulations would defer to those agreements regarding the applicability of authorizing requirements of the foreign country.

Proposed § 600.9(d)(1)(iii) would not create a new requirement for accrediting agency approval of foreign additional locations or branch campuses. Rather, approval would be required in accordance with the existing regulations for the approval of additional locations and branch campuses in the regulations for the Secretary's recognition of accrediting agencies. That is, under the current regulations, if an institution plans to establish a branch campus, the accrediting agency must require the institution to notify the agency, submit a business plan for the branch campus, and wait for accrediting agency approval (§ 602.24(a)). For additional locations that provide at least 50 percent of a program, accrediting agencies must have substantive change policies that include the evaluation of additional locations that provide at least 50 percent of a program, unless the location meets certain exceptions (§ 602.22(a)(2)(viii)). In order to facilitate the oversight role of the State in which the institution's main campus is located with respect to a foreign additional location or branch campus, proposed § 600.9(d)(1)(v) would require an institution with a main campus in the State to report the establishment or operation of a foreign additional location or branch campus to the State at least annually, or more frequently if required by the State. Although the proposed regulations would not specifically require an institution to obtain authorization in the State in which the main campus is located for the foreign additional location or branch campus, in recognition that a State may set limitations on the establishment or operation of foreign locations or branch campuses other than simply denying eligibility, proposed § 600.9(d)(1)(vi) would provide that an institution must comply with any State limitations on the establishment or operation of a foreign additional location or branch campus set by that State.

To ensure that students are aware of the complaint process of the State in which the main campus of the institution is located, proposed § 600.9(d)(3) would require institutions to disclose information regarding the student complaint process to enrolled and prospective students at that foreign additional location or branch campus. To minimize burden, the proposed regulations would require that this disclosure be made in accordance with the existing consumer disclosure requirements of subpart D of part 668, rather than through the establishment of a separate disclosure.

Proposed § 600.9(d)(4) would make clear that if the State limits the authorization of the institution to exclude the additional foreign location or branch campus in a foreign country, the additional location or branch campus would not be considered to be authorized by the State. This would mean that a State is not required to authorize a foreign additional location or branch campus, but if a State expressly prohibits an institution then the location is not considered to be authorized. A State may also provide conditions by which an institution must abide by to have its foreign additional locations or branch campuses be authorized. In such an instance, the institution must abide by those conditions to be considered authorized.

§ 668.50 Institutional Disclosures for Distance or Correspondence Programs

Statute: Section 485(a)(1) of the HEA provides that an institution must disclose information about the institution's accreditation and State authorization.

Current Regulations: None.

Proposed Regulations: The Department proposes to add new § 668.50, which would require an institution to disclose certain information about the institution's distance education programs or correspondence courses to enrolled and prospective students. The Department proposes seven general disclosures to be made publicly available and three individualized disclosures that will require direct communication with enrolled and prospective students, but only if certain conditions are met. The proposed regulations state that the Secretary may determine the form and content of these disclosures in the future. These proposed disclosures will not alter or reduce any other required disclosures that are required in this subpart.

For distance education programs and correspondence courses offered by an institution of higher education, the institution must disclose:

- How the distance education program or correspondence course is authorized (34 CFR 668.50(b)(1));
- How to submit complaints to the appropriate State agency responsible for student complaints or to the state authority reciprocity agreement, whichever is appropriate based on how the program or course is authorized (34 CFR 668.50(b)(2));
- How to submit complaints to the appropriate State agency in the student's State of residence (34 CFR 668.50(b)(3));

- Any adverse actions taken by a State or accrediting agency against an institution of higher education's distance education program or correspondence course and the year that the action was initiated for the previous five calendar years (34 CFR 668.50(b)(4) and 34 CFR 668.50(b)(5));
- Refund policies that the institution is required to comply with (34 CFR 668.50(b)(6));
- The applicable licensure or certification requirements for a career a student prepares to enter, and whether the program meets those requirements (34 CFR 668.50(b)(7)).

Additionally, these institutions must also disclose directly:

- When a distance education program or correspondence course does not meet the licensure or certification requirements for a State to all prospective students (34 CFR 668.50(c)(1)(i));
- When an adverse action is taken against an institution's postsecondary education programs offered by the institution solely through distance education or correspondence student to each enrolled and prospective student (34 CFR 668.50(c)(2)); and
- Any determination that a program ceases to meet licensure or certification requirements to each enrolled and prospective student (34 CFR 668.50(c)(2)).

Under proposed § 668.50(b)(1), an institution would be required to disclose whether the program offered by the institution through distance education or correspondence courses is authorized by each State in which students enrolled in the program reside. If an institution is authorized through a State authorization reciprocity agreement, the institution would be required to disclose its authorization status under such an agreement.

Under proposed § 668.50(b)(2)(i), an institution authorized by a State agency would be required to disclose the process for submitting complaints to the appropriate State agency in the State in which the main campus of the institution is located, including providing contact information for the appropriate individuals at the State agencies that handle consumer complaints.

Under proposed § 668.50(b)(2)(ii), an institution that is authorized by a State authorization reciprocity agreement would be required to disclose the complaint process established by the reciprocity agreement, if the agreement establishes such a process. In addition to the State authorization reciprocity agreement's complaint process, an institution authorized through such an agreement would also be required to provide contact information for the individual responsible for handling such complaints, as set out in the State authorization reciprocity agreement, if applicable.

Under proposed § 668.50(b)(3), an institution would be required to disclose the process for submitting complaints to the appropriate State agency for all States in which the institution enrolls students in distance education programs or correspondence courses, regardless of whether the institution is authorized by the State in which the main campus of the institution is located or by a State authorization reciprocity agreement.

Under proposed § 668.50(b)(4) and (5), an institution would be required to disclose any adverse actions a State entity or an accrediting agency has initiated related to the institution's distance education programs or correspondence courses for a five calendar year period prior to the year in which the institution makes the disclosure.

Under proposed § 668.50(b)(6), an institution would be required to disclose, for any State in which the institution enrolls students in distance education programs or correspondence courses, any State policies requiring the institution to refund unearned tuition and fees.

Under proposed § 668.50(b)(7), an institution would be required to disclose the applicable educational prerequisites for professional licensure or certification which the program prepares the student to enter in any State in which the program's enrolled students reside, or any other State for which the institution has made a determination regarding such prerequisites. The institution would also be required to disclose whether the distance education program or correspondence course does or does not satisfy those applicable educational prerequisites for professional licensure or certification. Distance education programs and correspondence courses enroll students from a multitude of States where they do not have a physical presence and their programs may not necessarily lead to licensure or certification, which would be important for students to know. For any State as to which an institution has not made a determination with respect to the licensure or certification requirement, an institution would be required to disclose a statement to that effect. This disclosure does not require an institution to make a determination with regard to how its distance education programs or correspondence courses meet the prerequisites for licensure or certification in States where none of its enrolled students reside, but does require an institution to disclose whether it has made such determinations and, if it has made a determination, whether its programs meet such prerequisites.

Under proposed § 668.50(c), an institution offering programs solely through distance education or correspondence courses would be required to provide individualized disclosures to students to disclose certain information, but only if certain conditions are met. An individualized disclosure would be providing a disclosure through direct contact, such as through an email or written correspondence, unlike a public disclosure, such as through the program's Web site or in promotional material.

Under proposed § 668.50(c)(1)(i), an institution would be required to provide an individualized disclosure to prospective students when the institution determines that an educational program is being offered solely through distance education or correspondence courses, excluding internships or practicums, does not meet licensure or certification prerequisites in the State of the student's residence. The institution would be required to obtain an acknowledgment from the student that the communication was received prior to the student's enrollment in the program. The Department believes this can be solved relatively easily by including attestation as part of a student's enrollment agreement or other paperwork required for new students by the institution, which an institution would already prepare and maintain.

Under proposed § 668.50(c)(1)(ii), an institution would be required to provide an individualized disclosure to enrolled and prospective students of any adverse action initiated by a State or an accrediting agency related to the institution's programs, including the years in which such actions were initiated, and when the institution determines that its program ceases to meet licensure or certification prerequisites of a State. These individualized disclosures would have to occur within 30 days and 7 days of the institution becoming aware of the event, respectively.

Reasons: The proposed regulations in § 668.50 would increase transparency and accountability in the distance education sector by providing enrolled and prospective students with essential information about postsecondary institutions that offer distance education programs and correspondence courses.

Through these proposed requirements, a student enrolled or planning to enroll in programs offered through distance education or correspondence courses would receive information regarding whether programs or courses are authorized by the State in which he or she lives and whether those programs or courses also meet State prerequisites for licensure and certification. Without such requirements, students could unknowingly enroll in programs that do not qualify them for Federal student aid or that do not fulfill requirements for employment in a particular profession or field, either in the State in which they reside or in the State in which they intend to seek employment.

These requirements would also strengthen the effectiveness of the program integrity triad by ensuring that enrolled and prospective students are aware of any adverse actions a State or accrediting agency has initiated against an institution that may potentially impact the post-secondary success or financial well-being of students. This requirement would also limit the time period for disclosing such information to the past five years, so that institutions would not be required to disclose every adverse action ever made against them, and institutions that have improved over time will be able to distance themselves from an adverse compliance history.

We believe it is important to provide information to students on whatever adverse actions have been initiated against an institution regarding its distance education program or correspondence course regardless of the status of the action. For example, if an institution appeals an adverse action being taken against it by a State, we believe that an institution should still disclose that adverse action to an enrolled or prospective student. However, the institution is permitted to provide qualifying information to the student about any appeal that is being pursued by the institution regarding its distance education program or correspondence course offered by the institution.

Additionally, through these requirements, students would receive information about the complaint processes available to them. This information should be readily available to students as a way to ensure transparency and to protect students from bad actors in the field. We also believe that students should be provided with the complaint process for their State of residence regardless of how their distance education program or correspondence course was authorized.

Providing information to a student about tuition refund policies is also important as it may impact a student's finances and their decision to enroll in a distance education program or correspondence courses. This information can help a student navigate the refund process if they decide to withdraw from a course or program.

Given the multi-State environment in which distance education programs and correspondence courses may be offered, it is important that students understand and make informed decisions about the educational options available to them through distance and correspondence education. As such, these proposed regulations would require that certain individualized disclosures be made to students, but only in certain situations. Under these proposed regulations, when a State or accrediting agency initiates an adverse action against an institution offering programs offered through distance education or correspondence courses or if a program does not meet or ceases to meet prerequisites for State licensure or certification, this information will be directly communicated to enrolled and prospective students. In those situations, these disclosures will help a student evaluate whether enrollment or continued enrollment in a particular program is in his or her best interest.

Overall, the public and individualized disclosures provided under these proposed regulations establish important consumer protections within the distance education field and help enrolled and prospective students make informed choices about postsecondary distance education programs and correspondence courses.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Introduction

Under Executive Order 12866, it must be determined whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these proposed regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In this Regulatory Impact Analysis we discuss the need for regulatory action, the potential costs and benefits, net budget impacts, assumptions, limitations, and data sources, as well as regulatory alternatives we considered. Although the majority of the costs related to information collection are discussed within this RIA, elsewhere in this NPRM under Paperwork Reduction Act of 1995, we also identify and further explain burdens specifically associated with information collection requirements.

Need for Regulatory Action

The landscape of higher education has changed over the last 20 years. During that time, the role of distance education in the higher education sector has grown significantly. For Fall 1999, eight percent of all male students and ten percent of all female students participated in at least one distance education course.[1] Recent IPEDS data indicate that in the fall of 2013, 26.4 percent of students at degree-granting, title IV participating institutions were enrolled in at least one distance education class.[1] The emergence of online learning options has allowed students to enroll in colleges authorized in other States and jurisdictions with relative ease. According to the National Center for Education Statistics' Integrated Postsecondary Education Data System (IPEDS), in the fall of 2014, the number of students enrolled exclusively in distance education programs totaled 843,107. Distance education industry sales have increased alongside student enrollment. As students continue to embrace distance education, revenue for distance education providers has increased steadily. In 2014, market research firm Global Industry Analysts projected that 2015 revenue for the distance education industry would reach $107 billion.[2] For the same year, gross output for the overall non-hospital private Education Services sector totaled $332.2 billion.[3] Distance education has grown to account for roughly one-third of the U.S. non-hospital private Education Services sector. In this aggressive market environment, distance education providers have looked to expand their footprint to gain market share. An analysis of recent data from IPEDS indicates that 2,301 title-IV-participating institutions offered 23,434 programs through distance education in 2014. Approximately 2.8 million students were exclusively enrolled in distance education courses, with 1.2 million of those students enrolled in programs offered by institutions from a different State. Table 1 summarizes the number of institutions, programs, and students involved in distance education by sector.

TABLE 1—2014 PARTICIPATION IN DISTANCE EDUCATION BY SECTOR

Sector	Institutions offering distance education programs	Number of distance education programs	Students exclusively in distance education programs	Students exclusively in out-of-state distance education programs
Public 4-year	540	5,967	692,074	144,039
Private Not-for-Profit 4-year	745	6,555	607,224	333,495
Proprietary 4-year	255	5,153	820,630	628,699
Public 2-year	625	5,311	690,771	45,684
Private Not-for-Profit 2-year	15	42	814	388
Proprietary 2-year	87	339	21,421	5,291
Public less-than-2-year	7	10	55	-
Private Not-for-Profit less-than- 2-year	1	1	-	-
Proprietary less-than-2-year	26	56	1,056	382
Total	2,301	23,434	2,834,045	1,157,978

Some States have entered into reciprocity agreements with other States in an effort to address the issues that distance education presents, such as States having differing and conflicting requirements that institutions of higher education will have to adhere to, potentially causing increased costs and burden for those institutions. For example, as of June 2016, 40 States and the District of Columbia have entered into a State Authorization Reciprocity Agreement (SARA) administered by the National Council for State Authorization Reciprocity Agreements, which establishes standards for the interstate offering of postsecondary distance-education courses and programs. Through a State authorization reciprocity agreement, an approved institution may provide distance education to residents of any other member State without seeking authorization from each member State. However, even where States accept the terms of a reciprocity agreement, that agreement may not apply to all institutions and programs in any given State.

There also has been a significant growth in the number of American institutions and programs enrolling students abroad. As of May 2016, American universities were operating 80 foreign locations worldwide according to information available from the

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[1] 2014 Digest of Education Statistics: Table 311.15: Number and percentage of students enrolled in degree-granting postsecondary institutions, by distance education participation, location of student, level of enrollment, and control and level of institution: fall 2012 and fall 2013.

[2] Online Learning Industry Poised for $107 Billion In 2015 (*http://www.forbes.com/sites/tjmccue/2014/08/27/online-learning-industry-poised-for-107-billion-in-2015/#46857a0966bc*).

[3] US Bureau of Economic Analysis GDP-by-Industry interactive table (*http://bea.gov/iTable/iTableHtml.cfm?reqid=51&step=51&isuri=1&5101=1&5114=a&5113=61go&5112=1&5111=2014&5102=15*).

Department's Postsecondary Education Participation System (PEPS). Many institutions are also allowing foreign students to enroll in distance education programs in conjunction with, or in lieu of, taking courses at a foreign location.

American institutions operating foreign locations are still relatively new. As such, data about the costs involved in these operations is limited. Some American institutions establishing locations in other countries have negotiated joint ventures and reimbursement agreements with foreign governments to share the startup costs. The Department found no evidence suggesting that institutions make payments to foreign governments in order to operate in the foreign country.

With the expansion of these higher education models, the Department believes it is important to maintain a minimum standard of State approval for higher education institutions. The proposed regulations support States in their efforts to develop standards for this growing sector of higher education. The clarified requirements related to State authorization also support the integrity of the Federal student aid programs by not supplying funds to programs and institutions that are not authorized to operate in a given State.

Summary of Proposed Changes

The proposed regulations:

- Require an institution offering distance education or correspondence courses to be authorized by each State in which the institution enrolls students, if such authorization is required by the State, including through a State authorization reciprocity agreement.
- Define the term "State authorization reciprocity agreement" to be an agreement between two or more States that authorizes an institution located in a State covered by the agreement to provide postsecondary education through distance education or correspondence courses to students in other States covered by the agreement.
- Require an institution to document the State process for resolving complaints from students enrolled in programs offered through distance education or correspondence courses.
- Require that an additional location or branch campus located in a foreign location be authorized by an appropriate government agency of the country where the additional location or branch campus is located and, if at least half of an educational program can be completed at the location or branch campus, be approved by the institution's accrediting agency and be reported to the State where the institution's main campus is located.
- Require that an institution provide public and individualized disclosures to enrolled and prospective students regarding its programs offered solely through distance education or correspondence courses.

Discussion of Costs, Benefits, and Transfers

The potential primary benefits of the proposed regulations are: (1) Increased transparency and access to institutional and program information, (2) updated and clarified requirements for State authorization of distance education and foreign additional locations, and (3) a process for students to access complaint resolution in either the State in which the institution is authorized or the State in which they reside.

We have identified the following groups and entities we expect to be affected by the proposed regulations:

- Students
- Institutions
- Federal, State, and local government

Students

Students who made public comments during negotiated rulemaking stated that the availability of online courses allowed them to earn credentials in an environment that suited their personal needs. We believe, therefore, that students would benefit from increased transparency about distance education programs. The disclosures of adverse actions against the programs, refund policies, and the prerequisites for licensure and whether the program meets those prerequisites in States for which the institution has made those determinations would provide valuable information that can help students make more informed decisions about which institution to attend. Increased access to information could help students identify programs that offer credentials that potential employers recognize and value. Additionally, institutions would have to provide an individualized disclosure to enrolled and prospective students of adverse actions against the institution and when programs offered solely through distance education or correspondence courses do not meet licensure or certification prerequisites in the student's State of residence. The disclosure regarding adverse actions would help ensure that students have information about potential wrongdoing by institutions. Similarly, disclosures regarding whether a program meets applicable licensure or certification requirements would provide students with valuable information about whether attending the program will allow them to pursue the chosen career upon program completion. The licensure disclosure requires acknowledgment by the student before enrollment, which emphasizes the importance of ensuring students receive that information. It also recognizes that students may have specific plans for using their degree, potentially in a new State of residence where the program would meet the relevant prerequisites.

Students in distance education or at foreign locations of domestic institutions would also benefit from the disclosure and availability of complaint resolution processes that would let them know how to submit complaints to the State in which the main campus of the institution is located or, for distance education students, the students' State of residence. This can help to ensure the availability to students of consumer protections and make it more convenient for students to access those supports.

Institutions

Institutions will benefit from the increased clarity concerning the requirements and process for State authorization of distance education and of foreign additional locations. Institutions will bear the costs of ensuring they remain in compliance with State authorization requirements, whether through entering into a State authorization reciprocity agreement or researching and meeting the relevant requirements of the States in which they operate distance education programs. The Department does not ascribe specific costs to the proposed State authorization regulations and associated definitions because it is presumed that institutions are complying with applicable State authorization requirements. Additionally, nothing in the proposed regulations would require institutions to participate in distance education. However, in the event that the clarification of the State authorization requirements in the proposed regulations, among other factors, would provide an incentive for more institutions to be involved to offer distance education courses, the Department has estimated some costs as an illustrative example of what institutions can expect from complying with State authorization requirements.

The costs for each institution will vary based on a number of factors, including the institutions' size, the extent to which an institution provides distance education, and whether it participates in a State authorization reciprocity agreement or chooses to obtain authorization in specific States. The Department has estimated annual costs for institutions that participate in a reciprocity agreement using cost information for the National Council of State Authorization Reciprocity Agreements.[4] We assume that participation in such agreements will vary by sector and size of institution. Additionally, States that participate in these arrangements may charge their own fees, which vary by size and type of institution and range from zero dollars to $40,000 annually for institutions with 20,001 or more on-line out-of-State students.[5]

These costs are only one example of an arrangement institutions can use to meet distance education authorization requirements, so actual costs will vary. As seen in Table 2 below, the Department applied the costs associated with a SARA arrangement to all 2,301 title IV participating institutions reported as offering distance education programs in IPEDS for a total of $19.3 million annually in direct fees and charges associated with distance education authorization. Additional State fees to institutions applied were $3,000 for institutions under 2,500 FTE, $6,000 for 2,500 to 9,999 FTE, and $10,000 for institutions with 10,000 or more FTE. The Department welcomes comments on the assumptions and estimates presented here and will consider them in the analysis of the final regulation.

TABLE 2—ESTIMATED COSTS OF STATE AUTHORIZATION OF DISTANCE EDUCATION

Institutions	Count	SARA Fees	Additional State fees
Public 2-year or less			
Under 2,500	273	546,000	819,000
2,500 to 9,999	290	1,160,000	1,740,000
10,000 or more	69	414,000	690,000
Private Not-for-Profit 2-year or less			
Under 2,500	16	32,000	48,000
2,500 to 9,999	–		
10,000 or more	–		
Proprietary 2-year or less			
Under 2,500	109	218,000	327,000
2,500 to 9,999	3	12,000	18,000
10,000 or more	1	6,000	10,000
Public 4-year			
Under 2,500	92	184,000	276,000
2,500 to 9,999	235	940,000	1,410,000
10,000 or more	213	1,278,000	2,130,000
Private Not-for-Profit 4-year			
Under 2,500	474	948,000	1,422,000
2,500 to 9,999	227	908,000	1,362,000
10,000 or more	44	264,000	440,000
Proprietary 4-year			
Under 2,500	198	396,000	594,000
2,500 to 9,999	39	156,000	234,000
10,000 or more	18	108,000	180,000
Total	2,301	7,570,000	11,700,000

Domestic institutions that choose to operate foreign locations may incur costs from complying with the requirements of the foreign country or the State of their main campus, and these will vary based on the location, the State, the percentage of the program offered at the foreign location, and other factors. As with distance education, nothing in the regulation requires institutions to operate foreign locations and we assume that institutions have complied with applicable requirements in operating their foreign locations.

In addition to the costs institutions incur from identifying State requirements or entering a State authorization reciprocity agreement to comply with the proposed regulations, institutions will incur costs associated with the proposed disclosure requirements. This additional workload is discussed in more detail under the *Paperwork Reduction Act of 1995* section of this preamble. In total, the proposed regulations are estimated to increase burden on institutions participating in the title IV, HEA programs by 35,365 hours. The monetized cost of this burden on institutions, using wage data developed using Bureau of Labor Statistics BLS data available at: *www.bls.gov/ncs/ect/sp/ecsuphst.pdf,* is $ 1,292,591. This burden estimate is based on an hourly rate of $36.55.

Federal, State, and Local Governments

The proposed regulations maintain the important role of States in authorizing institutions and in providing consumer protection for residents. The increased clarity about State authorization should also assist the Federal government in administering the title IV, HEA programs. The proposed regulations would not require States to take specific actions related to authorization of distance education programs. States would choose the systems they establish, their participation in a State authorization reciprocity agreement, and the fees they charge institutions and have the option to do nothing in response to the proposed regulations. Therefore, the Department has not quantified specific annual costs to States based on the proposed regulations.

Net Budget Impacts

The proposed regulations are not estimated to have a significant net budget impact in costs over the 2017–2026 loan cohorts. A cohort reflects all loans originated in a given fiscal year. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans.

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[4] NC–SARA Fees *http://nc-sara.org/what-does-institution-do.*

[5] State Fees for In-state Institutions *http://www.nc-sara.org/state-fees-regarding-sarawww.nc-sara.org/state-fees-regarding-sara* (National Council for State Authorization Reciprocity Agreement).

In the absence of evidence that the proposed regulations will significantly change the size and nature of the student loan borrower population, the Department estimates no significant net budget impact from the proposed regulations. While the clarity about the requirements for State authorization and the option to use State authorization reciprocity agreements may expand the availability of distance education; that does not necessarily mean the volume of student loans will expand greatly. Additional distance education could serve as a convenient option for students to pursue their education and loan funding may shift from physical to online campuses. Distance education has expanded significantly already and the proposed regulations are only one factor in institutions' plans within this field. The distribution of title IV, HEA program funding could continue to evolve, but the overall volume is also driven by demographic and economic conditions that are not affected by the proposed regulations and State authorization requirements are not expected to change loan volumes in a way that would result in a significant net budget impact. Likewise, the availability of options to study abroad at foreign locations of domestic institutions offers students flexibility and potentially rewarding experiences, but is not expected to significantly change the amount or type of loans students use to finance their education. Therefore, the Department does not estimate that the requirements that an additional location or branch campus located in a foreign location be authorized by an appropriate government agency of the country where the additional location or branch campus is located and, if at least half of an educational program can be completed at the location or branch campus, be approved by the institution's accrediting agency and be reported to the State where the institution's main campus is located will have a significant budget impact on title IV, HEA programs. The Department welcomes comments on this analysis and will consider them in the development of the final rule.

Assumptions, Limitations and Data Sources

In developing these estimates, a wide range of data sources were used, including data from the National Student Loan Data System, and data from a range of surveys conducted by the National Center for Education Statistics such as the 2012 National Postsecondary Student Aid Survey. Data from other sources, such as the U.S. Census Bureau, were also used.

Alternatives Considered

In the interest of promoting good governance and ensuring that these proposed regulations produce the best possible outcome, the Department reviewed and considered various proposals from both internal sources as well as from non-Federal negotiators. We summarize below the major proposals that we considered but ultimately declined to adopt in these proposed regulations.

The Department has addressed State authorization during two previous rulemaking sessions, one in 2010 and the other in 2014. In 2010, State authorization of distance education was not a topic addressed in the negotiations, but the Department addressed the issue in the final rule in response to public comment. The distance education provision in the 2010 regulation was struck down in court on procedural grounds, leading to the inclusion of the issue in the 2014 negotiations. The 2014 proposal would have required, in part, an institution of higher education to obtain State authorization wherever its students were located. That proposal would also have allowed for reciprocity agreements between States as a form of State authorization, including State authorization reciprocity agreements administered by a non-State entity. The Department and participants of the 2014 rulemaking session were unable to reach consensus.

As it developed the proposed regulations, the Department considered adopting the 2010 or 2014 proposals. However, the 2010 rule did not allow for reciprocity agreements and did not require a student complaint process for distance education students if a State did not already require it. The 2014 proposal raised concerns about complexity and level of burden involved. The Department therefore used elements of both proposals in formulating these proposed regulations. Using the 2010 rule as a starting point, the proposed regulations allow for State authorization reciprocity agreements and provide a student complaint process requirement to achieve a balance between appropriate oversight and burden level. The Department and non-Federal negotiators reached agreement on the provisions related to foreign locations without considering specific alternative proposals.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 668.50 *Institutional disclosures for distance education or correspondence education programs.*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

Initial Regulatory Flexibility Analysis

The proposed regulations would affect institutions that participate in the title IV, HEA. The U.S. Small Business Administration (SBA) Size Standards define "for-profit institutions" as "small businesses" if they are independently owned and operated and not dominant in their field of operation with total annual revenue below $7,000,000. The SBA Size Standards define "not-for-profit institutions" as "small organizations" if they are independently owned and operated and not dominant in their field of operation, or as "small entities" if they are institutions controlled by governmental entities with populations below 50,000. Under these definitions, approximately 4,267 of the IHEs that would be subject to the proposed paperwork compliance provisions of the final regulations are small entities. Accordingly, we have prepared this initial regulatory flexibility analysis to present an estimate of the effect on small entities of the proposed regulations. The Department welcomes comments on this analysis and requests additional information to refine it.

Description of the Reasons That Action by the Agency Is Being Considered

The Secretary is proposing to amend the regulations governing the title IV, HEA programs to provide clarity to the requirements for, and options to: obtain State authorization of distance education, correspondence courses, and foreign locations; document the process to resolve complaints from distance education students in the State in which they reside; and make disclosures about distance education and correspondence courses.

Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Regulations

Section 101(a)(2) of the HEA defines the term "institution of higher education" to mean, in part, an educational institution in any State that is legally authorized within the State to provide a program of education beyond secondary education. Section 102(a) of the HEA provides, by reference to section 101(a)(2) of the HEA, that a proprietary institution of higher education and a postsecondary vocational institution must be similarly authorized within a State. Section 485(a)(1) of the HEA provides that an institution must disclose information about the institution's accreditation and State authorization.

Description of and, Where Feasible, an Estimate of the Number of Small Entities to which the Regulations Will Apply

These proposed regulations would affect IHEs that participate in the Federal Direct Loan Program and borrowers. Approximately 60 percent of IHEs qualify as small entities, even if the range of revenues at the not-for-profit institutions varies greatly. Using data from IPEDS, the Department estimates that approximately 4,267 IHEs participating in the title IV, HEA programs qualify as small entities—1,878 are not-for-profit institutions, 2,099 are for-profit institutions with programs of two years or less, and 290 are for-profit institutions with four-year programs. The Department believes that most proprietary institutions that are heavily involved in distance education should not be considered small entities because the scale required to operate substantial distance education programs would put them above the relevant revenue threshold. However, the private non-profit sector's involvement in the field may mean that a significant number of small entities could be affected. The Department also expects this to be the case for foreign locations of domestic institutions, with proprietary institutions operating foreign locations unlikely to be small entities and a number of private not-for-profit classified as small entities involved.

Distance education offers small entities, particularly not-for-profit entities of substantial size that are classified as small entities, an opportunity to serve students who could not be accommodated at their physical locations. Institutions that that choose to provide distance education could potentially capture a larger share of the higher education market. Overall, as of Fall 2013, approximately 13 percent of students receive their education exclusively through distance education while 73 percent took no distance education courses. However, at proprietary institutions almost 52 percent of students were exclusively distance education students and 40 percent had not enrolled in distance education courses. As discussed above, we assume that most of the proprietary institutions offering a substantial amount of distance education are not small entities, but if not-for-profit institutions expand their role in the distance education sector, small entities could increase their share of revenue. On the other hand, small entities that operate physical campuses could face more competition from distance education providers. The potential reshuffling of resources within higher education would occur regardless of the proposed regulations, but the clarity provided by the distance education requirements and the acceptance of State authorization reciprocity agreementss could accelerate those changes.

However, in order to accommodate students through distance learning, institutions would face a number of costs, including the costs of complying with the authorization requirements of the proposed regulations. As with the broader set of institutions, the costs for small entities would vary based on the scope of the distance education they choose to provide, the States in which they operate, and the size of the institution. Applying the same costs from the National Council for State Authorization Reciprocity Agreements as in the Regulatory Impact Analysis, we estimate that small entities will face annual costs of $7.0 million.

TABLE 3—ESTIMATED COSTS FOR STATE AUTHORIZATION OF DISTANCE EDUCATION FOR SMALL ENTITIES

Institutions	Count	SARA fees	Additional state fees
Private Not-for-Profit 2-year or less			
Under 2,500	16	32,000	48,000
2,500 to 9,999	—		
10,000 or more	—		
Proprietary 2-year or less			
Under 2,500	109	218,000	327,000
2,500 to 9,999	—	—	—
10,000 or more	—	—	—
Private Not-for-Profit 4-year			
Under 2,500	474	948,000	1,422,000
2,500 to 9,999	227	908,000	1,362,000
10,000 or more	44	264,000	440,000
Proprietary 4-year			
Under 2,500	198	396,000	594,000
2,500 to 9,999	—	—	—
10,000 or more	—	—	—
Total	1,068	2,766,000	4,193,000

Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Regulations, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

Table 3 relates the estimated burden of each information collection requirement to the hours and costs estimated in the *Paperwork Reduction Act of 1995* section of the preamble. This additional workload is discussed in more detail under the *Paperwork Reduction Act of 1995* section of the preamble. Additional workload would normally be expected to result in estimated costs associated with either the hiring of additional employees or opportunity costs related to the reassignment of existing staff from other activities. In total, these changes are estimated to increase burden on small entities participating in the title IV, HEA programs by 13,981 hours. The monetized cost of this additional burden on institutions, using wage data developed using BLS data available at *www.bls.gov/ncs/ect/sp/ecsuphst.pdf,* is $510,991. This cost was based on an hourly rate of $36.55.

TABLE 4—PAPERWORK REDUCTION ACT BURDEN FOR SMALL ENTITIES

Provision	Reg section	OMB control number	Hours	Costs
Reporting related to foreign additional locations or branch campuses.	600.9	1845–NEW1	86	3,158
Public disclosure made to enrolled and prospective students in the institution's distance education programs or correspondence courses. Requires 7 disclosures related to State authorization, complaints process, adverse actions, refund policies, and whether the program meets prerequisites for licensure or certification..	668.50(b)	1845–NEW2	13,623	497,921
Individualized disclosure to and attestation by enrolled and prospective students of distance education programs about adverse actions or the program not meeting licensure requirements in the student's State..	668.50(c)	1845–NEW2	271	9,912
Total			13,981	510,991

Identification, to the Extent Practicable, of All Relevant Federal Regulations that May Duplicate, Overlap, or Conflict with the Regulations

The regulations are not expected to duplicate, overlap, or conflict with existing Federal regulations.

Alternatives Considered

As described above, the Department participated in negotiated rulemaking when developing the proposed regulations, and considered a number of options for some of the provisions. No alternatives were aimed specifically at small entities.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Sections 600.9 and 668.50 contain information collection requirements. Under the PRA, the Department has submitted a copy of these sections, and an Information Collection Request (ICR) to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final regulations, we will display the control numbers assigned by OMB to any information collection requirements proposed in this NPRM and adopted in the final regulations.

Background

The following data will be used throughout this section: For the year 2014, there were 2,301 institutions that reported to IPEDS that they had enrollment of 2,834,045 students attending a program through distance education as follows:

1,172 public institutions reported 1,382,900 students attending a program through distance education;

761 private, not-for-profit institutions reported 608,038 students attending a program through distance education;

368 private, for-profit institutions reported 843,107 students attending a program through distance education.

According to information available from the Department's Postsecondary Education Participation System (PEPS), there are currently 80 domestic institutions with identified additional locations in 60 foreign countries; 35 public institutions, 42 private, not-for-profit institutions, and 3 private, for-profit institutions.

Section 600.9 State Authorization

State Authorization of Foreign Additional Locations and Branch Campuses of Domestic Institutions

Requirements: Proposed § 600.9(d)(1)(v) would specify that, for any foreign additional location at which 50 percent or more of an educational program is offered, or will be offered, and any foreign branch campus, an institution would be required to report the establishment or operation of the foreign additional location or branch campus to the State in which the main campus of the institution is located at least annually, or more frequently if required by the State.

Burden Calculation: There will be burden on each domestic institution reporting the establishment or continued operation of a foreign additional location or branch campus to the State in which the main campus of the domestic institution is located. We estimate that each institution will require 2 hours annually to draft and submit the required notice. The total estimated burden would be 160 hours under OMB Control Number 1845–NEW1. We estimate that 35 public institutions will require a total of 70 hours to draft and submit the required State notice (35 institutions × 2 hours). We estimate that 42 private, not-for-profit institutions will require a total of 84 hours to draft and submit the required State notice (42 institutions × 2 hours). We estimate that 3 private, for-profit institutions will require a total of 6 hours to draft and submit the required State notice (3 institutions × 2 hours).

The total estimated burden for 34 CFR 600.9 would be 160 hours under OMB Control Number 1845–NEW1.

Section 668.50 Institutional Disclosures for Distance or Correspondence Programs

Requirements: The Department proposes to add new § 668.50(b) and (c), which would require disclosures to enrolled and prospective students in the institution's distance education programs or correspondence courses. Seven proposed disclosures would be made publicly available, and three disclosures would require direct communication with enrolled and prospective students when certain conditions have been met. These proposed disclosures would not change any other required disclosures of subpart D of Student Assistance General Provisions.

Public Disclosures

Under proposed § 668.50(b)(1), an institution would be required to disclose whether or not the program offered through distance education or correspondence courses is authorized by each State in which enrolled students reside. If an institution is authorized through a State authorization reciprocity agreement, the institution would be required to disclose its authorization status under such an agreement.

Under proposed § 668.50(b)(2)(i), an institution authorized by a State agency would be required to disclose the process for submitting complaints to the appropriate State agency in the State in which the main campus of the institution is located, including contact information for the appropriate individuals at those State agencies that handle consumer complaints.

Under proposed § 668.50(b)(2)(ii), an institution authorized by a State authorization reciprocity agreement would be required to disclose the complaint process established by the reciprocity agreement, if the agreement established such a process. An institution would be required to provide a contact responsible for handling such complaints, as set out in the State authorization reciprocity agreement.

Under proposed § 668.50(b)(3), an institution would be required to disclose the process for submitting complaints to the appropriate State agency in the State in which enrolled students reside, including contact information for the appropriate individuals at those State agencies that handle consumer complaints.

Under proposed § 668.50(b)(4), an institution would be required to disclose any adverse actions a State entity has initiated related to the institution's distance education programs or correspondence courses for a five calendar year period prior to the year in which the institution makes the disclosure.

Under proposed § 668.50(b)(5) an institution would be required to disclose any adverse actions an accrediting agency has initiated related to the institution's distance education programs or correspondence courses for a five calendar year period prior to the year in which the institution makes the disclosure.

Under proposed § 668.50(b)(6), an institution would be required to disclose any refund policies for the return of unearned tuition and fees with which the institution is required to comply by any State in which the institution enrolls students in a distance education program or correspondence courses. This disclosure would require publication of the State-specific requirements on the refund policies as well as any institutional refund policies that would be applicable to students enrolled in programs offered through distance education or correspondence courses with which the institution must comply.

Under proposed § 668.50(b)(7), an institution would be required to disclose the applicable educational prerequisites for professional licensure or certification which the program offered through distance education or correspondence course prepares the student to enter for each State in which students reside, and for which the institution has made a determination regarding such prerequisites. For any State for which an institution has not made a determination with respect to the licensure or certification requirement, an institution would be required to disclose a statement to that effect.

Burden Calculation: We anticipate that institutions will provide this information electronically to enrolled and prospective students regarding their distance education or correspondence courses. We estimate that the seven public disclosure requirements would take institutions an average of 15 hours to research, develop, and post on a Web site. We estimate that 1,172 public institutions would require 17,580 hours to research, develop, and post on a Web site the required public disclosures (1,172 institutions × 15 hours). We estimate that 761 private, not-for-profit institutions would require 11,415 hours to research, develop, and post on a Web site the required public disclosures (761 institutions × 15 hours). We estimate that 368 private, for-profit institutions would require 5,520 hours to research, develop, and post on a Web site the required public disclosures (368 institutions × 15 hours).

The total estimated burden for proposed § 668.50(b) would be 34,515 hours under OMB Control Number 1845–NEW2.

Individualized Disclosures

Under proposed § 668.50(c)(1)(i), an institution would be required to provide an individualized disclosure to prospective students when it determines a program offered solely through distance education or correspondence courses does not meet licensure or certification prerequisites in the State of the student's residence.

Under proposed § 668.50(c)(1)(ii), an institution would be required to provide an individualized disclosure to both enrolled and prospective students within 30 days of when it becomes aware of any adverse action initiated by a State or an accrediting agency related to the institution's programs offered through distance education or correspondence courses; or within seven days of the institution's determination that a program ceases to meet licensure or certification prerequisites of a State.

For prospective students who receive any individualized disclosure and subsequently enroll, proposed § 668.50(c)(2) would require an institution to obtain an acknowledgment from the student that the communication was received prior to the student's enrollment in the program.

Burden Calculation: We anticipate that institutions will provide this information electronically to enrolled and prospective students regarding their distance education or correspondence courses. We estimate that institutions would take an average of 2 hours to develop the language for the individualized disclosures. We estimate that it would take an additional average of 4 hours for the institution to individually disclose this information to enrolled and prospective students for a total of 6 hours of burden to the institutions. We estimate that five percent of institutions would meet the criteria to require these individual disclosures. We estimate that 59 public institutions would require 354 hours to develop the language for the disclosures and to individually disclose this information to enrolled and prospective students (59 institutions × 6 hours). We estimate that 38 private, not-for-profit institutions would require 228 hours to develop the language for the disclosures and to individually disclose this information to enrolled and prospective students (38 institutions × 6 hours). We estimate that 18 private, for-profit institutions would require 108 hours to develop the language for the disclosures and to individually disclose this information to enrolled and prospective students (18 institutions × 6 hours).

The total estimated burden for proposed § 668.50(c) would be 690 hours under OMB Control Number 1845–NEW2.

The combined total estimated burden for proposed § 668.50 would be 35,205 hours under OMB Control Number 1845–NEW2.

Consistent with the discussion above, the following chart describes the sections of the proposed regulations involving information collections, the information being collected, and the collections that the Department will submit to OMB for approval and public comment under the PRA, and the estimated costs associated with the information collections. The monetized net costs of the increased burden on institutions, lenders, guaranty agencies, and borrowers, using BLS wage data, available at *www.bls.gov/ncs/ect/sp/ecsuphst.pdf,* is $1,292,591 as shown in the chart below. This cost was based on an hourly rate of $36.55 for institutions.

COLLECTION OF INFORMATION

Regulatory section	Information collection	OMB Control number and estimated burden [change in burden]	Estimated costs
§ 600.9	The proposed regulations would specify that, for any foreign additional location at which 50 percent or more of an educational program is offered, or will be offered, and any foreign branch campus, an institution would be required to report the establishment or operation of the foreign additional location or branch campus to the State in which the main campus of the institution is located at least annually, or more frequently if required by the State.	1845–NEW1—This would be a new collection. We estimate that the burden would increase by 160 hours.	$5,848
§ 668.50(b)	The proposed regulations would require institutions to produce disclosures to enrolled and prospective students in the institution's distance education programs or correspondence courses. Seven proposed disclosures must be made publicly available. These disclosures include: (1) Whether the distance education programs are authorized by the State where the student resides; (2) The process for submitting a complaint to the appropriate State agency in the State where the main campus of the institution is located; (3) The process for submitting a complaint if the institution is covered by a State authorization reciprocity agreement and it has such a process; (4) The disclosure of any adverse action initiated by the institution's State entity related to the distance education program; (5) The disclosure of any adverse action initiated by the institution's accrediting agency related to the distance education program; (6) The disclosure of any refund policy required by any State in which the institution enrolls students; (7) The disclosure of any determination made regarding whether or not the distance education program meets applicable prerequisites for professional licensure or certification in the State where the student resides, if such a determination has been made. If such a determination has not been made, a statement to that effect would be required.	1845–NEW2—This would be a new collection. We estimate that the burden would increase by 34,515 hours.	1,261,523
§ 668.50(c)	The proposed regulations would require institutions to produce disclosures to enrolled and prospective students in the institution's distance education programs or correspondence courses. Three proposed disclosures must be made available to individuals. These disclosures include: (1) Notice of an adverse action by the State or accrediting agency related to the distance education program. This disclosure must be provided within 30 days of when the institution becomes aware of the action; (2) Notice of the institution's determination that the distance education program no longer meets the prerequisites for licensure or certification of a State. This disclosure must be provided within 7 days of when the institution makes such a determination.	1845–NEW2—This would be a new collection. We estimate that the burden would increase by 690 hours	25,220

The total burden hours and change in burden hours associated with each OMB Control number affected by the proposed regulations follows:

Control number	Total proposed burden hours	Proposed change in burden hours
1845–NEW1	160	160
1845–NEW2	35,205	35,205
Total	35,365	35,365

We have prepared an Information Collection Request (ICR) for these information collection requirements. If you want to review and comment on the ICR, please follow the instructions in the **ADDRESSES** section of this notice.

Note: The Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB), and the Department of Education review all comments posted at *www.regulations.gov.*

In preparing your comments, you may want to review the ICR, including the supporting materials, in *www.regulations.gov* by using the Docket ID number specified in this notice. These proposed collections are identified as proposed collections *1845–NEW1 and 1845–NEW2.*

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Between 30 and 60 days after publication of this document in the **Federal Register**, OMB is required to make a decision concerning the collections of information contained in these proposed regulations. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments on this ICR by August 24, 2016. This does not affect the deadline for your comments to us on the proposed regulations.

If your comments relate to the ICRs for these proposed regulations, please specify the Docket ID number and indicate "Information Collection Comments" on the top of your comments.

Intergovernmental Review

These programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. "Federalism implications" means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed regulations in § 600.9(c) and (d) may have federalism implications. We encourage State and local elected officials to review and provide comments on these proposed regulations.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the person [one of the persons] listed under **FOR FURTHER INFORMATION CONTACT**.

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You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department. (Catalog of Federal Domestic Assistance: 84.007 FSEOG; 84.033 Federal Work Study Program; 84.037 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 LEAP; 84.268 William D. Ford Federal Direct Loan Program; 84.379 TEACH Grant Program)

List of Subjects

34 CFR Part 600

Colleges and universities, Foreign relations, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

Dated: July 13, 2016.

John B. King, Jr.,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend parts 600 and 668 as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

■ 2. Section 600.2 is amended by adding, in alphabetical order, a definition of "State authorization reciprocity agreement'' to read as follows:

§ 600.2 Definitions.

* * * * *

State authorization reciprocity agreement. An agreement between two or more States that authorizes an institution located and legally authorized in a State covered by the agreement to provide postsecondary education through distance education or correspondence courses to students in other States covered by the agreement and does not prohibit a participating State from enforcing its own consumer protection laws.

* * * * *

■ 3. Section 600.9 is amended by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 600.9 State authorization.

* * * * *

(c)(1)(i) If an institution described under paragraph (a)(1) of this section offers postsecondary education through distance education or correspondence courses to students in a State in which the institution is not physically located or in which the institution is otherwise subject to that State's jurisdiction as determined by that State, except as provided in paragraph (c)(1)(ii) of this section, the institution must meet any State requirements for it to be legally offering postsecondary distance education or correspondence courses in that State. The institution must, upon request, document to the Secretary the State's approval.

(ii) If an institution described under paragraph (a)(1) of this section offers postsecondary education through distance education or correspondence courses in a State that participates in a State authorization reciprocity agreement, and the institution is covered by such agreement, the institution is considered to meet State requirements for it to be legally offering postsecondary distance education or correspondence courses in that State, subject to any limitations in that agreement. The institution must, upon request, document its coverage under such an agreement to the Secretary.

(2) If an institution described under paragraph (a)(1) of this section offers postsecondary education through distance education or correspondence courses to students residing in a State in which the institution is not physically located, for the institution to be considered legally authorized in that State, the institution must document that there is a State process for review and appropriate action on complaints from any of those enrolled students concerning the institution—

(i) In each State in which the institution's enrolled students reside; or

(ii) Through a State authorization reciprocity agreement which designates for this purpose either the State in which the institution's enrolled students reside or the State in which the institution's main campus is located.

(d) An additional location or branch campus of an institution, described under paragraph (a)(1) of this section, that is located in a foreign country, *i.e.,* not in a State, must comply with §§ 600.8, 600.10, 600.20, and 600.32, and the following requirements:

(1) For any additional location at which 50 percent or more of an educational program (as defined in § 600.2) is offered, or will be offered, or at a branch campus—

(i) The additional location or branch campus must be legally authorized by an appropriate government authority to operate in the country where the additional location or branch campus is physically located, unless the additional location or branch campus is physically located on a U.S. military base and the institution can demonstrate that it is exempt from obtaining such authorization from the foreign country;

(ii) The institution must provide to the Secretary, upon request, documentation of such legal authorization to operate in the foreign country, demonstrating that the government authority is aware that the additional location or branch campus provides postsecondary education and that the government authority does not object to those activities;

(iii) The additional location or branch campus must be approved by the institution's recognized accrediting agency in accordance with § 602.24(a) and § 602.22(a)(2)(viii), as applicable;

(iv) The additional location or branch campus must meet any additional requirements for legal authorization in that foreign country as the foreign country may establish;

(v) The institution must report to the State in which the main campus of the institution is located at least annually, or more frequently if required by the State, the establishment or operation of each foreign additional location or branch campus; and

(vi) The institution must comply with any limitations the State places on the establishment or operation of the foreign additional location or branch campus.

(2) An additional location at which less than 50 percent of an educational program (as defined in § 600.2) is offered or will be offered must meet the requirements for legal authorization in that foreign country as the foreign country may establish.

(3) In accordance with the requirements of 34 CFR 668.41, the institution must disclose to enrolled and prospective students at foreign additional locations the information regarding the student complaint process described in 34 CFR 668.43(b).

(4) If the State in which the main campus of the institution is located limits the authorization of the institution to exclude the foreign additional location or branch campus, the foreign additional location or branch campus is not considered to be legally authorized by the State.

* * * * *

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 4. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001–1003, 1070a, 1070g, 1085, 1087b, 1087d, 1087e, 1088, 1091, 1092, 1094, 1099c, 1099c–1, 1221e–3, and 3474, unless otherwise noted.

§ 668.2 [Amended]

■ 5. Section 668.2 is amended in paragraph (a) by adding to the list of definitions, in alphabetical order, "Distance education".

■ 6. Section 668.50 is added to subpart D to read as follows:

§ 668.50 Institutional disclosures for distance or correspondence programs.

(a) *General.* In addition to the other institutional disclosure requirements established in this subpart, an institution described under 34 CFR 600.9(a)(1) that offers a program solely through distance education or correspondence courses must provide the information described in paragraphs (b) and (c) of this section to enrolled and prospective students in that program.

(b) *Public disclosures.* An institution described under 34 CFR 600.9(a)(1) that offers an educational program that is provided, or can be completed solely through distance education or correspondence courses, excluding internships and practicums, must make available the following information to enrolled and prospective students of such program, the form and content of which the Secretary may determine:

(1)(i) Whether the institution is authorized to provide the program by each State in which enrolled students reside; or

(ii) Whether the institution is authorized through a State authorization reciprocity agreement, as defined in 34 CFR 600.2;

(2)(i) If the institution is required to provide a disclosure under paragraph (b)(1)(i) of this section, a description of the process for submitting complaints, including contact information for the receipt of consumer complaints at the appropriate State authorities in the State in which the institution's main campus is located, as required under § 668.43(b); and

(ii) If the institution is required to provide a disclosure under paragraph (b)(1)(ii) of this section, and that agreement establishes a complaint process as described in 34 CFR 600.9(c)(2)(ii), a description of the process for submitting complaints that was established in the reciprocity agreement, including contact information for receipt of consumer complaints at the appropriate State authorities;

(3) A description of the process for submitting consumer complaints in each State in which the program's enrolled students reside, including contact information for receipt of consumer complaints at the appropriate State authorities;

(4) Any adverse actions a State entity has initiated, and the years in which such actions were initiated, related to postsecondary education programs offered solely through distance education or correspondence courses at the institution for the five calendar years prior to the year in which the disclosure is made;

(5) Any adverse actions an accrediting agency has initiated, and the years in which such actions were initiated, related to postsecondary education programs offered solely through distance education or correspondence courses at the institution for the five calendar years prior to the year in which the disclosure is made;

(6) Refund policies with which the institution is required to comply by any State in which enrolled students reside for the return of unearned tuition and fees; and

(7)(i) The applicable educational prerequisites for professional licensure or certification for the occupation for which the program prepares students to enter in—

(A) Each State in which the program's enrolled students reside; and

(B) Any other State for which the institution has made a determination regarding such prerequisites;

(ii) If the institution makes a determination with respect to certification or licensure prerequisites in a State, whether the program does or does not satisfy the applicable educational prerequisites for professional licensure or certification in that State; and

(iii) For any State as to which the institution has not made a determination with respect to the licensure or certification prerequisites, a statement to that effect.

(c) *Individualized disclosures.* (1) An institution described under 34 CFR 600.9(a)(1) that offers a program solely through distance education or correspondence courses must disclose directly and individually—

(i) To each prospective student, any determination by the institution that the program does not meet licensure or certification prerequisites in the State of the student's residence, prior to the student's enrollment; and

(ii) To each enrolled and prospective student—

(A) Any adverse action initiated by a State or an accrediting agency related to postsecondary education programs offered by the institution solely through distance education or correspondence study within 30 days of the institution's becoming aware of such action; or

(B) Any determination by the institution that the program ceases to meet licensure or certification prerequisites of a State within 7 days of that determination.

(2) For a prospective student who received a disclosure under paragraph (c)(1)(i) of this section and who subsequently enrolls in the program, the institution must receive acknowledgment from that student that the student received the disclosure and be able to demonstrate that it received the student's acknowledgment.

(Authority: 20 U.S.C. 1092)

[FR Doc. 2016–17068 Filed 7–22–16; 8:45 am]

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Part V

Department of Energy

10 CFR Parts 429 and 430

Energy Conservation Program: Test Procedures for Ceiling Fans; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2013–BT–TP–0050]

RIN 1904–AD10

Energy Conservation Program: Test Procedures for Ceiling Fans

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE) is issuing a final rule to amend the test procedures for ceiling fans. DOE is establishing an integrated efficiency metric for ceiling fans, based on airflow and power consumption at high and low speed for low-speed small-diameter ceiling fans; at high speed for high-speed small-diameter ceiling fans; and at up to five speeds for large-diameter ceiling fans. The integrated efficiency metric also accounts for power consumed in standby mode. DOE is also adopting new test procedures for large-diameter ceiling fans, multi-mount ceiling fans, ceiling fans with multiple fan heads, and ceiling fans where the airflow is not directed vertically, and clarifying when these methods must be conducted. Additionally, DOE is adopting the following changes to the current test procedure: Eliminating the test cylinder from the test setup; specifying the method of measuring the distance between the ceiling fan blades and the air velocity sensors during testing; specifying the fan configuration during testing for ceiling fans that can be mounted in more than one configuration; specifying the test method for ceiling fans with heaters; specifying that a ceiling fan is not subject to the test procedure if the plane of rotation of the ceiling fan's blades cannot be within 45 degrees of horizontal; specifying that centrifugal ceiling fans are not subject to the test procedure; specifying that all small-diameter ceiling fans must be mounted directly to the real ceiling for testing; revising the allowable measurement tolerance for air velocity sensors; revising the allowable mounting tolerance for air velocity sensors; revising the testing temperature requirement; requiring measurement axes to be perpendicular to walls; specifying the position of air conditioning vents and doors during testing; specifying operation of room conditioning equipment; specifying the power source and how power measurements are to be made; and specifying stable measurement criteria and a method for determining stability.

DATES: The effective date of this rule is August 24, 2016. The final rule changes will be mandatory for representations made with respect to the energy use or efficiency of ceiling fans starting January 23, 2017. The incorporation by reference of certain publications listed in this rule was approved by the Director of the Federal Register on August 24, 2016.

ADDRESSES: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at regulations.gov. All documents in the docket are listed in the regulations.gov index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-TP-0050.* This Web page will contain a link to the docket for this document on the regulations.gov site. The regulations.gov Web page will contain simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact Ms. Lucy deButts at (202) 287–1604 or by email: *ceiling_fans@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

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Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7796. Email: *elizabeth.kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: This final rule incorporates by reference into part 430 the following industry standards:

(1) ANSI/AMCA Standard 230–15, (“AMCA 230–15”), “Laboratory Methods of Testing Air Circulating Fans for Rating and Certification,” ANSI approved October 16, 2015.

(2) IEC 62301, (“IEC 62301–U”), “Household electrical appliances—Measurement of standby power,” (Edition 2.0, 2011–01).

You can obtain copies of ANSI/AMCA Standard 230–15 from the American National Standards Institute, 25 W. 43rd Street, 4th Floor, New York, NY 10036, 212–642–4900, or *www.ansi.org.* You can obtain copies of IEC 62301:2011 from the International Electrotechnical Commission, 3, rue de Varembé, P.O. Box 131, CH—1211 Geneva 20—Switzerland, or *https://webstore.iec.ch.*

For a further discussion of these standards, see section IV.M.

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I. Authority and Background

Title III of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6291, *et seq.;* "EPCA" or, "the Act") sets forth a variety of provisions designed to improve energy efficiency. Part B of title III, which for editorial reasons was redesignated as Part A upon incorporation into the U.S. Code (42 U.S.C. 6291–6309, as codified), establishes the "Energy Conservation Program for Consumer Products Other Than Automobiles." These consumer products include ceiling fans, the subject of this document. (42 U.S.C. 6291(49), 6293(b)(16)(A)(i) and (B), and 6295(ff))

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA, and (2) making representations about the efficiency of those products. Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures that DOE must follow when prescribing or amending test procedures for covered products, including ceiling fans. EPCA provides that any test procedures must be reasonably designed to produce test results that measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use, and must not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)) Finally, in any rulemaking to amend a test procedure, DOE must determine to what extent, if any, the proposed test procedure would alter the measured energy efficiency of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e))

EPCA established energy conservation standards (design standards) for ceiling fans, as well as requirements for the ceiling fan test procedure. (42 U.S.C. 6295(ff) and 6293(b)(16)(A)(1)) Specifically, EPCA requires that test procedures for ceiling fans be based on the "ENERGY STAR Testing Facility Guidance Manual: Building a Testing Facility and Performing the Solid State Test Method for ENERGY STAR Qualified Ceiling Fans, Version 1.1." Id. The current DOE ceiling fan test procedure, based on that source, was published in a 2006 final rule (71 FR 71341 (Dec. 8, 2006)), which codified the test procedure in DOE's regulations in the Code of Federal Regulations (CFR) at 10 CFR 430.23(w) and 10 CFR part 430, subpart B, appendix U, "Uniform Test Method for Measuring the Energy Consumption of Ceiling Fans."

EPCA requires DOE, at least once every 7 years, to conduct an evaluation of the test procedures for all covered products and either amend the test procedures (if the Secretary determines that amended test procedures would more accurately or fully comply with the requirements of 42 U.S.C. 6293(b)(3)) or publish a determination in the **Federal Register** not to amend them. (42 U.S.C. 6293(b)(1)(A)) The final rule resulting from this rulemaking will satisfy this requirement.

In addition, for covered products with test procedures that do not fully account for standby-mode and off-mode energy consumption, EPCA directs DOE to amend its test procedures to do so with such energy consumption integrated into the overall energy efficiency, energy consumption, or other energy descriptor, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)) If an integrated test procedure is technically infeasible, DOE must prescribe a separate standby-mode and off-mode test procedure for the covered product, if technically feasible. Id. This test procedure rulemaking addresses standby-mode and off-mode power consumption.

DOE is concurrently conducting an energy conservation standards rulemaking for ceiling fans.[1] On September 29, 2014, DOE published in the **Federal Register** a Notice of Public Meeting and Availability of the Preliminary Technical Support Document for the energy conservation standards rulemaking for ceiling fans. 79 FR 58290. DOE held the preliminary analysis public meeting on November 19, 2014. DOE requested feedback in the preliminary analysis document and received both written comments and comments at the public meeting from interested parties on many issues related to test methods for evaluating the airflow and electrical consumption performance of ceiling fans. Some of the comments that DOE received related to the test procedure for ceiling fans were addressed in the test procedure SNOPR (80 FR 31487 (Jun. 3, 2015)), and the remaining comments are addressed throughout this final rule. The ceiling fan energy conservation standards NOPR was published on January 13, 2016, and the associated public meeting was held on February 3, 2016. (81 FR 1688) DOE received comments on the standards NOPR pertaining to various aspects of the test procedure, particularly regarding definitions of ceiling fan types, and these comments are also addressed throughout this final rule.

II. Synopsis of the Final Rule

This final rule amends DOE's current test procedures for ceiling fans contained in 10 CFR part 430, subpart B, appendix U; 10 CFR 429.32; and 10 CFR 430.23(w). This final rule: (1) Specifies new test procedures for large-diameter ceiling fans, multi-mount ceiling fans, ceiling fans with multiple fan heads, and ceiling fans where the airflow is not directed vertically, and (2) adopts the following changes to the current test procedure: (a) Low-speed small-diameter ceiling fans must be tested at high and low speeds; (b) high-speed small-diameter ceiling fans must be tested at high speed only; (c) large-diameter ceiling fans must be tested at up to five speeds; (d) a test cylinder is not to be used during testing; (e) fans that can be mounted at more than one height are to be mounted in the configuration that minimizes the distance between the fan blades and the ceiling; (f) any heater installed with a ceiling fan is to be switched off during testing; (g) small-diameter ceiling fans must be mounted directly to the real ceiling; (h) the allowable measurement tolerance for air velocity sensors is ±5%; (i) the allowable mounting distance tolerance for air velocity sensors is ±1/16"; (j) the air delivery room must be at 70 F ±5 F during testing; (k) air delivery room doors and air conditioning vents must be closed and forced-air conditioning equipment turned off during testing; (l) small-diameter ceiling fans capable of being operated on both single- and multi-phase power must be tested with single-phase power, and large-diameter ceiling fans capable of being operated on both single- and multi-phase power must be tested with multi-phase power; (m) any fan rated for operation either at 120 V or at 240 V must be tested at that voltage, otherwise a fan must be tested at its lowest rated voltage or the mean of its lowest rated voltage range; (n) measurement axes must be perpendicular to test room walls; and (o) measurement stabilization requirements must be met for a valid test (*i.e.,* average air velocity for all axes for each sensor must be within 5% and average electrical power measurement must be within 1% for successive measurements).[2] DOE also determines that belt-driven ceiling fans, centrifugal ceiling fans, oscillating ceiling fans, and ceiling fans for which the plane of rotation of the fan blades cannot be within 45 degrees of horizontal are not subject to this final rule.

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[1] The ceiling fan energy conservation standard rulemaking information is available at regulations.gov under docket number EERE–2012–BT–STD–0045.

Additionally, to support the ongoing energy conservation standards rulemaking for ceiling fans, this final rule establishes test procedures for an integrated efficiency metric measured in cubic feet per minute per watt (CFM/W) that is applicable to all ceiling fans for which DOE has proposed energy conservation standards.[3] In this final rule, DOE also addresses standby mode and off-mode power consumption for ceiling fans. (42 U.S.C. 6295(gg)(2)(A) and (3))

III. Discussion

A. Scope of Applicability

EPCA defines a "ceiling fan" as "a non-portable device that is suspended from a ceiling for circulating air via the rotation of fan blades." (42 U.S.C. 6291(49)) The test procedures described in this final rule apply to any product meeting this definition, including applications where large airflow volume may be needed and highly decorative fans (as discussed in section III.A.4.), except for belt-driven ceiling fans, centrifugal ceiling fans, oscillating ceiling fans, or ceiling fans whose blades' plane of rotation cannot be within 45 degrees of horizontal (see Section III.A.2). All fans that meet the statutory definition of a ceiling fan are ceiling fans and do not fall within the scope of the rulemaking under consideration for commercial and industrial fans and blowers.[4]

1. Clarification of the Statutory Definition of a Ceiling Fan

DOE previously interpreted the definition of a ceiling fan such that it excluded certain types of ceiling fans commonly referred to as hugger fans. 71 FR 71343 (Dec. 8, 2006). However, in the test procedure final rule for ceiling fan light kits (CFLKs), DOE reinterpreted the definition of ceiling fan to include hugger fans and clarified that the definition also includes fans capable of producing large volumes of airflow. 80 FR 80209 (Dec. 24, 2015)

2. Ceiling Fans Not Subject to the Test Procedure

In the October 2014 test procedure NOPR, DOE proposed that centrifugal ceiling fans (commonly referred to as "bladeless" ceiling fans) would not be required to test such fans according to the ceiling fan test procedure, which would not accurately measure the energy efficiency of such fans. ALA supported this proposal, and DOE received no comments expressing disagreement. (ALA, No. 8 at p. 1) DOE is defining a centrifugal ceiling fan as a ceiling fan for which the primary airflow direction is in the same plane as the rotation of the fan blades. In this final rule, DOE is not requiring manufacturers of centrifugal ceiling fans to test such fans according to the test procedure.

In the ceiling fans test procedure supplemental notice of proposed rulemaking (SNOPR) published on June 3, 2015, DOE proposed that manufacturers are not required to test ceiling fans pursuant to the test procedure if the plane of rotation of the ceiling fan's blades cannot be within 45 degrees of horizontal, as the test procedure is not designed to provide accurate performance data for such fans. 80 FR 31487. In response to this proposal, Big Ass Solutions (BAS) suggested DOE base this exemption on the direction of discharge for the majority of the airflow rather than on the plane of rotation of the ceiling fan's blades. (BAS, No. 13 at pp. 1–2)[5] BAS also provided two examples of ceiling fans for which the blades have a horizontal plane of rotation, but for which the proposed test procedure would not adequately evaluate the ceiling fan's performance due to the direction of the majority of the airflow not being vertically downward. (Id.)

DOE considers the two example ceiling fans BAS provided to be centrifugal ceiling fans, which DOE has separately determined will not be subject to this final rule. Therefore, DOE maintains that ceiling fans whose blades' plane of rotation cannot be within 45 degrees of horizontal will not be subject to this final rule.

In the concurrent ceiling fans energy conservation standards NOPR, DOE has proposed to define belt-driven ceiling fans as ceiling fans with a series of one or more fan heads, each driven by a belt connected to one or more motors. However, in the energy conservation standards NOPR, DOE does not propose standards for belt-driven ceiling fans, based on the limited number of basic models and lack of available data. Therefore, although DOE is investigating appropriate test procedures for belt-driven ceiling fans, such fans will not be subject to the test procedure adopted here.

DOE has observed that there are ceiling fans capable of oscillating, either through an oscillation of the axis of rotation of individual fan heads or a rotation in position amongst multiple fan heads. Such fans can be tested according to the appropriate proposed test procedures for ceiling fans with tilt and/or multi-headed fans if the axis of rotation of the fan blades can remain in a fixed position relative to the ceiling (*e.g.,* by switching off the oscillating feature). However, DOE recognizes that not all ceiling fans capable of oscillating can meet this requirement. In this final rule, DOE is defining an "oscillating ceiling fan" as "a ceiling fan containing one or more fan heads for which the axis of rotation of the fan blades cannot remain in a fixed position relative to the ceiling. Such fans have no inherent means by which to disable the oscillating function separate from the fan blade rotation." Although DOE is investigating appropriate test procedures for oscillating ceiling fans, fans with an oscillating function that cannot remain in a fixed position relative to the ceiling will not be subject to the test procedures adopted here. For the purpose of this test procedure, multi-head ceiling fans for which the fan will not oscillate if fan blades are only installed on one fan head do not meet the definition of "oscillating fan" and are subject to the test procedure established by this final rule. For this rulemaking, because the airflow measurement for multi-head fans is to be taken with the fan blades installed on only one fan head, such ceiling fans are not considered oscillating ceiling fans, and are therefore subject to the test procedures adopted here.

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[2] This provision allows for in-axis variation amongst sensors while making sure the measurement as a whole is stable.

[3] The docket for the concurrent ceiling fans energy conservation standards rulemaking is located here: *http://www.regulations.gov/#!docketDetail;D=EERE-2012-BT-STD-0045.*

[4] *https://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-STD-0006.*

[5] A notation in this form provides a reference for information that is in the docket of DOE's rulemaking to develop test procedures for ceiling fans (Docket No. EERE–2013–BT–TP–0050), which is maintained at *www.regulations.gov.* This notation indicates that the statement preceding the reference is document number 13 in the docket and appears at pages 1–2 of that document.

3. Definitions of Low-Speed Small-Diameter, High-Speed Small-Diameter, and Large-Diameter Ceiling Fans

In the October 2014 test procedure NOPR, DOE proposed definitions for low-volume and high-volume ceiling fans based on airflow volume, blade span, blade edge thickness, and the maximum tip speed of the fan blades. Furthermore, in the test procedure SNOPR, DOE proposed different test procedures for low-volume ceiling fans, high-volume ceiling fans with blade spans less than or equal to seven feet, and high-volume ceiling fans with blade spans greater than seven feet. Specifically, DOE proposed to test all ceiling fans with blade spans less than or equal to seven feet (*i.e.,* both low-volume ceiling fans and high-volume ceiling fans with blade spans less than or equal to seven feet) using a test procedure based on version 1.1 of the ENERGY STAR test method, while all high-volume ceiling fans with blade spans greater than seven feet would be tested using a modified version of the AMCA 230–12 test procedure. DOE further proposed that high-volume ceiling fans with blade spans less than or equal to seven feet would be tested at only high speed, whereas other ceiling fans with blade spans less than or equal to seven feet (*i.e.,* low-volume ceiling fans) would be tested at both high and low speeds. DOE proposed this change to harmonize the DOE test procedure with accepted industry testing practices, and DOE received no stakeholder feedback in disagreement with this approach.

In this final rule, DOE is employing different terminology to delineate fans that were previously known as low-volume, high-volume small-diameter, and high-volume. To maintain consistency with the definitions proposed in the concurrent ceiling fans energy conservation standards rulemaking, DOE is defining the following categories of ceiling fans for use in this final rule: (1) A "large-diameter ceiling fan" is a ceiling fan that is greater than seven feet in diameter; (2) A "small-diameter ceiling fan" is a ceiling fan that is less than or equal to seven feet in diameter; (3) A "low-speed small-diameter ceiling fan" is a small diameter ceiling fan that meets both requirements in Table 1; and (4) A "high-speed small-diameter ceiling fan" is a small diameter ceiling fan that fails to meet at least one of the requirements in Table 1. Table 1 indicates maximum speed tip for low-speed small-diameter ceiling fans, depending on blade thickness. The values in Table 1 are based on the Underwriters Laboratory (UL) ceiling fan safety standard (UL Standard 507–1999, "UL Standard for Safety for Electric Fans") which designates maximum fan tip speeds (for a given thicknesses at the edge of the blades) that are safe for use in applications where the distance between the fan blades and the floor is 10 feet or less. Given the definitions and the requirements set forth in Table 1, DOE notes that any small-diameter ceiling fan with blade edge thickness less than 3.2 mm is necessarily a high-speed small-diameter (HSSD) ceiling fan. DOE also notes that, in response to the ceiling fan energy conservation standards NOPR, ALA provided minor, clarifying edits to the definitions of several fan types, including high-speed small diameter ceiling fans, standard ceiling fans and hugger ceiling fans. (ALA, No. 137[6] at pp. 4–5) These edits have been incorporated into the definitions in this final rule.

TABLE 1—UL 507 BLADE THICKNESS AND MAXIMUM TIP SPEED LIMITS

Airflow direction *	Thickness (t) of edges of blades		Maximum speed at tip of blades	
	(mm)	(Inch)	(m/s)	(feet per minute)
Downward-only	4.8 > t ≥ 3.2	3/16 > t ≥ 1/8	16.3	3200
Downward-only	t ≥ 4.8	t ≥ 3/16	20.3	4000
Reversible	4.8 > t ≥ 3.2	3/16 > t ≥ 1/8	12.2	2400
Reversible	t ≥ 4.8	t ≥ 3/16	16.3	3200

* The "downward-only" and "reversible" airflow directions are mutually exclusive; therefore, a ceiling fan that can only produce airflow in the downward direction need only meet the "downward-only" blade edge thickness and tip speed requirements and a ceiling fan that can produce airflow in the downward and upward directions need only meet the "reversible" requirements.

4. Definitions of Hugger, Standard, Multi-Mount, Highly-Decorative, Belt-Driven, and Very-Small-Diameter Ceiling Fans

In the October 2014 test procedure NOPR, DOE proposed to define a hugger ceiling fan as "a ceiling fan where the lowest point on the fan blades is no more than ten inches from the ceiling." Furthermore, DOE proposed to define standard and multi-mount ceiling fans as "a ceiling fan where the lowest point on the fan blades is more than ten inches from the ceiling" and "a ceiling fan that can be mounted in both the standard and hugger ceiling fan configurations," respectively. Stakeholders did not object to the 10-inch threshold specified in the October 2014 test procedure NOPR, but DOE did receive comments from Emerson and Westinghouse Lighting asking for the inclusion of a blade warpage tolerance. (Emerson, Public Meeting Transcript, No. 83 at pp. 86–87; Westinghouse Lighting, Public Meeting Transcript, No. 83 at p. 89) DOE understands the concern put forth by Emerson and Westinghouse Lighting, but DOE concludes that a specific distance needs to be selected to provide a clear division between the product classes for hugger and standard ceiling fans. For example, DOE found that standard ceiling fans on the market have a median distance of 12 inches from the ceiling to the fan blades; therefore, increasing the 10-inch distance by way of a blade warpage tolerance could result in the miscategorization of ceiling fans.

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[6] This document was submitted to the docket of DOE's rulemaking to develop energy conservation standards for ceiling fans (Docket No. EERE–2012–BT–STD–0045).

DOE also proposed regulatory definitions for hugger and standard ceiling fans and other low-speed small-diameter (LSSD) ceiling fans as part of the ceiling fans energy conservation standards rulemaking. Under the proposed definitions, a hugger ceiling fan is "a ceiling fan that is not a very small-diameter ceiling fan, highly-decorative ceiling fan or belt-driven ceiling fan; and where the lowest point on fan blades is ≤ 10 inches from the ceiling; and has a blade thickness of ≥3.2 mm at the edge and a maximum tip speed ≤ the applicable limit in the table in this definition," and a standard ceiling fan is "a ceiling fan that is not a very small-diameter ceiling fan, highly-decorative ceiling fan or belt-driven ceiling fan; and where the lowest point on fan blades is >10 inches from the ceiling; and has a blade thickness of ≥3.2 mm at the edge and a maximum tip speed ≤ the applicable limit in the table in this definition." (81 FR 1688 (January 13, 2016)) In both of these definitions, the table referenced is Table 1 above. DOE finalizes these definitions, with minor clarifying edits suggested by ALA (ALA, No. 137[7] at pp. 4–5), in this rulemaking. DOE also defines a multi-mount ceiling fan as "a ceiling fan that can be mounted in the configurations associated with the definitions of both standard and hugger ceiling fans," consistent with the proposed definition in the October 2014 test procedure NOPR.

DOE also proposed regulatory definitions for highly-decorative, belt-driven, and very-small diameter ceiling fans as part of the energy conservation standards rulemaking. Because the hugger and standard ceiling fan definitions finalized here invoke these terms, DOE is addressing any comments related to the definitions of these terms here. DOE proposed to define a highly-decorative ceiling fan as "a ceiling fan with a maximum rotational speed of 90 RPM and less than 1,840 CFM airflow at high speed;" a belt-driven ceiling fan as "a ceiling fan with a series of one or more fan heads, each driven by a belt connected to one or more motors;" and a very-small-diameter ceiling fan as "a ceiling fan that is not a highly-decorative ceiling fan or belt-driven ceiling fan; and has one or more fan heads, each of which has a blade span of 18 inches or less."

ALA did not oppose the inclusion of RPM and CFM in the highly-decorative ceiling fan definition. (ALA, No. 137[8] at p. 6) However, BAS commented that the proposed definition for highly-decorative fans should be based on tip speed, rather than a combination of RPM and CFM. According to BAS, using RPM as a basis for the definition without incorporating blade span limits smaller-diameter fans more than larger-diameter fans. BAS added that the use of tip speed rather than RPM is consistent with the definitions for standard and hugger fans, and RPM and blade span measurements are generally easier to make than airflow measurements for highly-decorative fans. BAS therefore suggests DOE adopt a definition requiring that only highly-decorative ceiling fans have tip speeds less than or equal to 700 feet per minute. (BAS, No. 138[9] at pp. 2–4)

DOE understands BAS's concern regarding the potential for disproportionate impact on fans of different diameters if RPM is the sole criterion for determining whether a ceiling fan is highly-decorative, but it is for this reason that a maximum airflow requirement is also part of the definition of a highly-decorative ceiling fan. In regard to BAS's comment that basing the definition of highly-decorative ceiling fans off of tip speed rather than RPM is consistent with the definition for standard and hugger fans, DOE notes that the tip speed limits in the standard and hugger ceiling fan definitions that delineate those fans from high-speed small-diameter ceiling fans are drawn from UL Standard 507 and based on safety considerations for fans installed in the residential sector. EPCA describes highly-decorative ceiling fans as ceiling fans for which air movement performance is a secondary design feature; therefore, the criteria are different for highly-decorative ceiling fans and including an airflow limit in the definition for highly-decorative ceiling fans is consistent with the statutory intent. (42 U.S.C. 6295(ff)(6)(B)(ii)) Furthermore, BAS did not elaborate on the statement that measuring the airflow of highly-decorative fans is more difficult than measuring RPM and blade span, and no other stakeholders expressed concern with measuring the airflow of highly-decorative fans. Therefore, DOE is finalizing the definition of a highly-decorative ceiling fan as "a ceiling fan with a maximum rotational speed of 90 RPM and less than 1,840 CFM airflow at high speed, as determined by sections 3 and 4 of appendix U."

DOE notes that efficiency performance standards have not been proposed for highly-decorative ceiling fans in the concurrent energy conservation standards rulemaking (81 FR 1688 (January 13, 2016)). If DOE does not establish performance standards for highly-decorative fans, manufacturers would continue to submit certification reports to DOE for such fans with respect to the statutory design standards. Both DOE and manufacturers would determine whether a fan met the definition of a highly decorative fan using the final test procedure, though manufacturers would not be required to submit the supporting information, including any test data, that supports their highly decorative classification as part of their certification submission to DOE. In addition, manufacturers would be required to test highly-decorative fans according to the test procedure established in this final rule to make representations of the energy efficiency of such fans (*e.g.,* for the EnergyGuide label).

The CA IOUs recommended that DOE include in the proposed definition of belt-driven ceiling fans that belt-driven ceiling fans have one or more motors located outside of the fan head. (CA IOUs, No. 144[10] at p. 1) To reduce potential regulatory ambiguity, DOE is finalizing the definition of a belt-driven ceiling fan as "a ceiling fan with a series of one or more fan heads, each driven by a belt connected to one or more motors that are located outside of the fan head."

DOE received no comments in the proposed definition of very-small-diameter ceiling fans; therefore, DOE is finalizing the definition of a very-small-diameter ceiling fan as "a ceiling fan that is not a highly-decorative ceiling fan or belt-driven ceiling fan; and has one or more fan heads, each of which has a blade span of 18 inches or less."

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[7] This document was submitted to the docket of DOE's rulemaking to develop energy conservation standards for ceiling fans (Docket No. EERE–2012–BT–STD–0045).

[8] This document was submitted to the docket of DOE's rulemaking to develop energy conservation standards for ceiling fans (Docket No. EERE–2012–BT–STD–0045).

[9] This document was submitted to the docket of DOE's rulemaking to develop energy conservation standards for ceiling fans (Docket No. EERE–2012–BT–STD–0045).

[10] This document was submitted to the docket of DOE's rulemaking to develop energy conservation standards for ceiling fans (Docket No. EERE–2012–BT–STD–0045).

B. Compliance Date

In the October 2014 test procedure NOPR, DOE proposed a compliance date 180 days after the publication of any final amended test procedures in the **Federal Register**. ALA urged DOE to not require use of a revised ceiling fans test procedure until the compliance date of the energy conservation standards established by the ongoing standards rulemaking, because DOE's revised test procedure will require manufacturers to retest every basic model of ceiling fan currently on the market. Additionally, DOE regulations already contain a test procedure for ceiling fans that can continue to be used up to the compliance date of the new ceiling fan efficiency standards. (ALA, No. 14 at p. 2)

This final rule, which would amend appendix U to Subpart B of 10 CFR 430, would not affect a manufacturer's ability to comply with current energy conservation standards, because DOE does not currently have performance-based standards for ceiling fans as measured by the airflow efficiency. As a result, manufacturers will not need time to re-design and re-tool their ceiling fans to meet any energy conservation standards based on the updated test procedures. The key requirement manufacturers will need to meet prior to the compliance date of the concurrent ceiling fan energy conservation standards is the requirement that any representations of ceiling fan efficiency be based on the test procedures set forth in this final rule on and after the compliance date of this final rule. Because re-tooling and re-design of ceiling fans will not be required, a compliance date 180 days after the publication of this final rule in the **Federal Register** will give manufacturers enough time to have their ceiling fans tested to meet the representation requirement.

Manufacturers are required to use the revised appendix U for representations of ceiling fan efficiency 180 days after the publication of any final amended test procedures in the **Federal Register**. If DOE establishes minimum energy conservation standards for ceiling fans based on airflow efficiency in the concurrent energy conservation standards rulemaking, manufacturers will be required to use the revised appendix U for determining compliance with any amended standards.

With respect to hugger fans, compliance with requirements related to the ceiling fan reinterpretation (see Section III.A.1) was discussed in the CFLK test procedure final rule. 80 FR 80209 (Dec. 24, 2015) As discussed in that rulemaking, DOE will not assert civil penalty authority for violations of the applicable standards arising as a result of the reinterpretation of the ceiling fan definition before June 26, 2017.

C. Existing Test Procedure

DOE's test procedure for ceiling fans is codified in appendix U to subpart B of part 430 of Title 10 of the CFR; 10 CFR 429.32; and 10 CFR 430.23(w). The current DOE test procedure references the "ENERGY STAR® Testing Facility Guidance Manual: Building a Testing Facility and Performing the Solid State Test Method for ENERGY STAR Qualified Ceiling Fans," version 1.1.[11] ENERGY STAR has since revised its test procedure, creating version 1.2 of ENERGY STAR's guidance manual.[12]

Although certain proposals in this rulemaking are consistent with version 1.2 of the ENERGY STAR test procedure, including test room dimensions and associated tolerances, DOE has proposed no modification to the 15-minute ceiling fan warm-up time specified in the current DOE test procedure, which is in accordance with the specifications of version 1.1 (as opposed to the 30-minute warm-up time before low speed specified in version 1.2). On this issue, the People's Republic of China (P.R. China) commented that International Electrotechnical Commission (IEC) standard 60879:1986, Performance and Construction of Electric Circulating Fans and Regulators, requires a warm-up time of two hours to achieve steady-state conditions at the test voltage. (P.R. China, No. 17 at p. 3)

DOE determined, however, that a 15-minute warm-up time for testing is sufficient to bring the fan's performance into near-steady-state conditions while still keeping test burden (in this case, time) to a minimum. Therefore, DOE has retained the 15-minute warm-up time in this final rule.

D. Integrated Efficiency Metric

DOE is applying a single metric based on airflow efficiency to all ceiling fans required to be tested according to the procedure established in this final rule (see Section III.A.2 for a discussion of ceiling fans not required to be tested). Airflow efficiency appears to be a nearly-universal metric used to describe the efficiency of ceiling fans and consists of airflow (*i.e.*, the service provided by a ceiling fan), as measured in cubic feet per minute (CFM), divided by power consumption, as measured in watts (W). Additionally, in accordance with the proposal in the October 2014 test procedure NOPR, DOE is amending 10 CFR 429.32 to provide sampling requirements for determining the represented values for ceiling fans.

Stakeholders generally agreed with DOE's test procedure NOPR proposal to use airflow efficiency as the efficiency metric for ceiling fans; however, MacroAir suggested DOE use fan efficiency—the amount of wind power produced by the fan divided by the power consumption of the fan—instead. (MacroAir, No. 6 at pp. 1–4) Part of MacroAir's argument for using fan efficiency as opposed to airflow efficiency is that fan efficiency does not overly inflate when revolutions per minute (RPM) are reduced, whereas airflow efficiency tends to be higher at lower fan speeds. DOE analyzed reports from testing over 30 ceiling fans in early 2014 and found that while airflow efficiency does tend to be lower at higher RPM, the reverse is true for fan efficiency: Fan efficiency tends to be lower at lower RPM and higher at higher RPM. Therefore, in the same way that manufacturers could opt to add more lower-RPM speeds on their ceiling fans to increase their overall airflow efficiency, manufacturers could opt to remove lower-RPM speeds on their ceiling fans to increase their overall fan efficiency. DOE notes that lower-RPM speeds consume less energy than higher-RPM speeds, and the removal of lower-RPM speeds eliminates the ability of consumers to use lower speeds when appropriate. Additionally, the fan efficiency calculation provided by MacroAir incorporates blade span as an input, which could result in unintentional market shifts (in this case, toward smaller blade spans). Because airflow efficiency is the metric accepted by the majority of the ceiling fan industry, DOE is using airflow efficiency as the basis of the integrated efficiency metric for ceiling fans in this final rule.

With regard to the integrated efficiency metric, BAS and ALA commented that the metric should incorporate the effect of energy-saving controls (*e.g.*, occupancy sensors) intended to reduce the amount of time a ceiling fan is operated in active mode.

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[11] U.S. Environmental Protection Agency. *ENERGY STAR® Testing Facility Guidance Manual: Building a Testing Facility and Performing the Solid State Test Method for ENERGY STAR Qualified Ceiling Fans: Version 1.1.* 2002. (Last accessed October 9, 2015.) *https://www.energystar.gov/ia/partners/manuf_res/downloads/ceiltestfinal.pdf.*

[12] U.S. Environmental Protection Agency. *ENERGY STAR® Laboratory Guidance Manual: Building a Testing Facility and Performing the Solid State Test Method for ENERGY STAR Qualification of Ceiling Fans: Version 1.2.* 2011. (Last accessed October 9, 2015.) *http://www.energystar.gov/ia/partners/manuf_res/downloads/Ceiling_Fan_Laboratory_Guidance_Manual.pdf.*

(BAS, Public Meeting Transcript, No. 5 at p. 145; ALA, Public Meeting Transcript, No. 5 at pp. 150–151) Results from a Lawrence Berkeley National Laboratory (LBNL) survey of the residential sector[13] showed that ceiling fans are operated in unoccupied spaces more than 40% of the time, on average, suggesting significant potential energy savings for controls. However, DOE is unaware of any similar data for the commercial or industrial sectors, or any data quantifying the actual decrease in energy consumption from the use of ceiling fan controls and sensors. Finally, ceiling fan sensors and controls are an emerging technology, and such devices are currently rare, so it is difficult to anticipate which controls may actually reduce energy use, or how much energy use may be saved by a particular control or sensor type. Given this, DOE has not considered measuring the energy savings of controls or sensors in this final rule.

1. Low-Speed Small-Diameter Ceiling Fans

To apply a single energy efficiency metric to LSSD ceiling fans, DOE is using a weighted average of the airflow and power consumption at high and low fan speeds, defined as the highest available and lowest available speeds, respectively. While most LSSD ceiling fans have one or more speeds between high and low, DOE is using only high and low speed in the metric to limit test burden and avoid confusion regarding the definition of medium speed for ceiling fans with more than three speeds.

In the October 2014 test procedure NOPR, DOE proposed to use hours-of-use results from a Lawrence Berkeley National Laboratory (LBNL) survey of U.S. ceiling fan owners to weight the low and high speed test results in the efficiency metric calculation for LSSD ceiling fans.[14] The LBNL survey indicated these ceiling fans are operated on high setting 41% of the time and on low setting 22% of the time. In response, the American Lighting Association (ALA) requested that DOE use data from an AcuPOLL survey indicating different hours of use—specifically, that ceiling fans are operated only 26% of the time on high setting and 36% of the time on low setting.[15] (ALA, No. 8 at p. 6) Hunter Fan Company (Hunter) also asked DOE to review the hours-of-use assumptions in light of the AcuPOLL survey results, especially because energy consumption at medium speed is typically less than the mid-point in energy consumption between high and low speeds. (Hunter, Public Meeting Transcript, No. 83 at pp. 15, 104) ALA again submitted a comment in response to the TP SNOPR asking that DOE use the AcuPOLL data for the LSSD ceiling fans efficiency metric weighting. (ALA, No. 14 at p. 6)

In light of ALA's and Hunter's comments and the AcuPOLL survey results, DOE compared the LBNL and AcuPOLL survey results and concluded that both surveys are relevant sources of information that should be taken into account to determine the fraction of time spent at each fan speed. DOE therefore estimated that the fraction of time LSSD ceiling fans were operated at each speed was equal to the simple average of the fractions reported by the LBNL and AcuPOLL surveys: 33% on high speed, 38% on medium speed, and 29% on low speed. When normalized to 100%, the fractions for high and low speed are 53% and 47%, respectively. DOE is weighting the high and low speed test results for LSSD ceiling fans based on these normalized fractions. Therefore, for calculating the overall efficiency for LSSD ceiling fans, DOE apportions the following daily operating hours (based on an overall daily usage of 6.4 hours per day, as proposed in the October 2014 test procedure NOPR): 3.4 hours at high speed, 3.0 hours at low speed, and 17.6 hours in off or standby mode.

The CA IOUs supported DOE's use of airflow efficiency as the metric for ceiling fan efficiency, but are concerned that DOE's proposal to test LSSD ceiling fans at low speed and high speed may not be specific enough. In particular, the CA IOUs suggest DOE require testing of ceiling fans at speeds that provide a specific airflow, which allows for a more direct comparison of the utility provided by ceiling fans. (CA IOUs, No. 15 at pp. 1–3) This suggestion aligned with comments made by BAS and Fanimation regarding HSSD and large–diameter ceiling fans during the October 2014 test procedure NOPR public meeting. (BAS, Public Meeting Transcript, No. 5 at pp. 106–108; Fanimation, Public Meeting Transcript, No. 5 at p. 110) DOE concluded that, while airflow is the main utility provided by ceiling fans, consumers of LSSD ceiling fans are unlikely to select a particular ceiling fan setting based on the specific amount of airflow that speed provides; instead, because LSSD ceiling fans typically have a small number of discrete speeds, consumers are expected to select the setting based on an imprecise determination of whether a given setting is providing too much or too little airflow. DOE also notes that as a consequence of LSSD ceiling fans having discrete speeds, precise airflow comparisons between different LSSD ceiling fans is impossible. Test burden would be added by having to test all available speed settings to determine which settings most closely align with the chosen airflow values. Therefore, in this final rule DOE is requiring all LSSD ceiling fans to be tested at their lowest and highest speed settings, regardless of the airflow volume provided at those settings.

2. High-Speed Small-Diameter Ceiling Fans

For reasons set forth in the test procedure SNOPR, DOE proposed in the SNOPR to test all ceiling fans with blade spans less than or equal to seven feet according to a test procedure based on air velocity sensor measurements (*i.e.,* as in the ENERGY STAR test procedure), with the caveat that HSSD fans would still be tested only at high speed. BAS and ALA supported testing HSSD fans at high speed only. (BAS, No. 13 at p. 2; ALA, No. 14 at p. 6) DOE is keeping the proposal to test HSSD fans only at high speed because they typically do not have discrete speeds, and therefore speeds other than high may not be well defined. Additionally, DOE does not have enough information to estimate a distribution of time spent at speeds other than high speed for the efficiency metric for HSSD ceiling fans.

In the October 2014 test procedure NOPR, DOE proposed operating hours for HSSD ceiling fans of 12 hours per day. No stakeholders indicated disagreement with the SNOPR testing proposal nor the NOPR's proposed operating hours for HSSD fans; therefore, for calculating the overall efficiency for these ceiling fans, DOE apportions the following daily operating hours: 12 hours at high speed and 12 hours in off or standby mode.

3. Large-Diameter Ceiling Fans

In the test procedure SNOPR, DOE proposed to test all large-diameter ceiling fans at five equally-spaced speeds: 100% (max speed), 80%, 60%, 40%, and 20%. The SNOPR also proposed that each speed other than 100% is given a tolerance of ±1% of the average measured RPM at 100% speed.

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[13] Kantner, C. L. S., S. J. Young, S. M. Donovan, and K. Garbesi. *Ceiling Fan and Ceiling Fan Light Kit Use in the U.S.—Results of a Survey on Amazon Mechanical Turk.* 2013. Lawrence Berkeley National Laboratory: Berkeley, CA. Report No. LBNL–6332E. (Last accessed October 13, 2015.) *http://www.escholarship.org/uc/item/3r67c1f9.*

[14] Kantner, *et al.* (2013), *op. cit.*

[15] AcuPOLL® Precision Research, Inc. *Survey of Consumer Ceiling Fan Usage and Operations.* 2014.

BAS and AMCA commented that if testing at multiple speeds is required, the tolerance should be revised to be the greater of 2 RPM and ±1% of the average measured RPM at 100% speed. (BAS, No. 13 at p. 8; AMCA, No. 140[16] at p. 2) The tolerance DOE proposed in the SNOPR would mean that the RPM tolerance for fans that only achieve 50 RPM at high speed would be 0.5 RPM.

DOE has concluded that the proposed tolerance may be too stringent, and perhaps not measurable, given the measurement tolerance of the test lab equipment. On the other hand, BAS's suggested tolerance means in practice that the 2 RPM tolerance would be in effect for any large-diameter ceiling fans that provide 200 RPM or less on high speed (which is a significant fraction of the large-diameter ceiling fan market). According to BAS's proposal, a ceiling fan that only provides 50 RPM at high speed would have a tolerance of ±4% of the average measured RPM at high speed, which DOE believes may be insufficient to ensure repeatability in test measurements. Therefore, in this final rule, DOE specifies an RPM tolerance of the greater of 1 RPM and ±1% of the average measured RPM at 100% speed.

In the test procedure SNOPR, to weight the performance results of the ceiling fans at each of the five speeds, DOE took a simple average of hours-of-use estimates provided by BAS and MacroAir. In doing so, DOE assumed that BAS agreed with DOE's estimate in the October 2014 NOPR of 12 hours of active mode operation per day. (BAS, No. 13 at pp. 5–6) BAS took issue with DOE's assumption and, therefore, disagreed with DOE's overall active mode estimate of 15 hours per day, calculated using a simple average of the 12 hours assumed from BAS and the 18 hours of active mode operation submitted by MacroAir. Id. DOE received no new operating hours estimates that could be used to calculate an alternative active mode operation time for large-diameter ceiling fans; however, based on BAS's comment and the lack of available large-diameter hours-of-use data, DOE has determined that using the active mode time of 12 hours per day originally proposed in the October 2014 test procedure NOPR is the most appropriate and representative estimate. As a result, DOE retains the 12 hours of daily active-mode operation for large-diameter ceiling fans proposed in the October 2014 test procedure NOPR.

In response to the SNOPR, BAS suggested that DOE require testing only at high speed for large-diameter ceiling fans. (BAS, No. 13 at p. 8) BAS also provided examples of multiple large-diameter fans that are unable to operate at those five equally-spaced speeds; therefore, BAS suggests that if testing at multiple speeds is required, DOE report the results of each tested speed separately. (BAS, No. 13 at pp. 4–5) The California investor-owned utilities (CA IOUs) suggested reporting the airflow and power draw of each of the speeds tested, in addition to the weighted airflow efficiency. (CA IOUs, No. 15 at pp. 1–3) BAS added that no reputable source of hours-of-use data exist for large-volume ceiling fans, which would be required to calculate the weighted airflow efficiency of the ceiling fan if such fans are tested at five speeds. (BAS, No. 13 at pp. 5–6)

While hours-of-use for large-diameter ceiling fans have not been well-studied, a more representative ceiling fan efficiency can be calculated by testing large-diameter ceiling fans at multiple speeds and weighting all those speeds equally (when compared to calculating the efficiency at only high speed). Therefore, as explained in more detail in Section III.F.1, DOE will require testing of large-diameter ceiling fans at up to five speeds. For calculating a ceiling fan's overall efficiency, the calculated efficiency at each tested speed will be apportioned active mode operating hours equally (*e.g.*, if five speeds are tested, each speed is given 20% of the overall daily operating hours).

E. Modifications to Existing Test Procedure

1. Required Testing Speeds for Low-Speed Small-Diameter and High-Speed Small-Diameter Ceiling Fans

As discussed in Section III.D.1, DOE is requiring all LSSD ceiling fans to be tested at high and low speeds. DOE has concluded that this approach will yield a more representative airflow efficiency than testing only at high speed, while limiting test burden and avoiding confusion regarding the definition of medium speed for ceiling fans with more than three speeds. In the test procedure SNOPR, DOE proposed to test LSSD ceiling fans at high speed first, and then to test them at low speed. BAS suggested DOE reverse this proposal, requiring low speed to be tested prior to high speed to reduce the likelihood of entrained air affecting the test results. (BAS, No. 13 at p. 7) In light of BAS's suggestion, and because DOE has concluded that there is no compelling reason to test at high speed first, in this final rule, DOE specifies that LSSD ceiling fans be tested at low speed first, and then high speed.

As discussed in Section III.D.2, DOE is requiring all HSSD fans to be tested at high speed only.

2. Elimination of Test Cylinder From Test Setup and Specification of Effective Area

In the October 2014 test procedure NOPR, DOE proposed to eliminate the current test procedure requirement to use a test cylinder while conducting airflow measurements. Under the proposed rule, the positioning of the ceiling fan and the air velocity sensors would remain the same as in the current test procedure, but without a test cylinder between them. Additionally, the same effective area and number of sensors as in the current test procedure would be used to calculate the airflow of a low-volume ceiling fan; specifically, to measure the airflow using enough air velocity sensors to record air delivery within a circle 8 inches larger in diameter than the blade span of the ceiling fan being tested.

DOE received unanimous agreement from stakeholders regarding the proposal to eliminate the test cylinder from the test setup. (Hunter, Public Meeting Transcript, No. 83 at pp. 124–125; Fanimation, Public Meeting Transcript, No. 83 at p. 125; BAS, No. 88 at p. 52; American Lighting Association, No. 8 at p. 8) According to DOE testing,[17] as well as comments from BAS and Hunter regarding their in-house testing, testing with a cylinder does not result in any significant difference in measured efficiency when compared to testing without the cylinder in place; furthermore, testing without a cylinder in place is more representative of typical usage conditions. (BAS, Public Meeting Transcript, No. 83 at p. 124; Hunter, Public Meeting Transcript, No. 83 at pp. 124–125) Therefore, in this final rule DOE has eliminated the test cylinder from the test setup.

In regard to the effective area and the number of air velocity sensors to use during testing, ALA conducted testing according to the test procedure proposed in the SNOPR and commented that including airflow measurements outside the limits of the proposed sensor setup would provide a more accurate representation of the airflow for many small-diameter ceiling fans. (ALA, No. 18 at p. 2) Therefore, ALA suggested DOE modify the proposed test procedure for all small-diameter ceiling fans to incorporate data from 12 air velocity sensors per sensor arm, spaced at 4-inch intervals, and incorporate the airflow data only from sensors recording an average airflow of more than 40 feet per minute (fpm). If DOE declined to adopt this approach, ALA suggested that DOE use enough air velocity sensors per sensor arm to record air delivery within a circle 24 inches larger in diameter than the blade span of the ceiling fan being tested. (ALA, No. 18 at pp. 2–3)

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[16] This document was submitted to the docket of DOE's rulemaking to develop energy conservation standards for ceiling fans (Docket No. EERE–2012–BT–STD–0045).

[17] U.S. Department of Energy–Office of Energy Efficiency and Renewable Energy. *Ceiling Fan Test Procedure Development Testing Final Report, Part 1: Energy Conservation Program for Consumer Products: Ceiling Fans.* 2014. (Last accessed November 5, 2015.) *http://www.regulations.gov/#!documentDetail;D=EERE-2013-BT-TP-0050-0002.*

DOE appreciates ALA's concern that more airflow sensors should be used to characterize small-diameter ceiling fans now that a test cylinder is not required. In regard to requiring 12 sensors for all fans, DOE concluded that this approach would not provide a representative comparison between larger and smaller ceiling fans. This is because the airflow efficiency for all small-diameter ceiling fans would be evaluated across the same effective area, despite ceiling fan guides consistently recommending that consumers scale the size of a ceiling fan to the size of a room (*e.g.*, installing larger ceiling fans in larger spaces), making such a comparison unlikely to be representative of typical use.

In regards to the 40 fpm minimum, DOE conducted testing to determine the effect ALA's proposal would have on a fan's measured airflow efficiency. Across nearly 40 fans DOE tested, no sensors recorded an average velocity less than 40 fpm while the fan was operating at high speed; however, average measurements below 40 fpm were observed for some ceiling fans while operating at low speed. Therefore, either the airflow efficiency of some ceiling fans would be calculated using a different effective area at high speed compared to low speed—which DOE believes would not be representative of typical use, as an installed ceiling fan is intended to service the same area regardless of the fan speed setting at which it is operating at a given time—or all sensors specified for a given ceiling fan should be used, because all sensors were required when taking the measurement at high speed. Furthermore, the test results showed that for many fans operating at low speed, a discontinuous set of sensors would meet the 40 fpm average airflow requirement (*e.g.*, sensors 1 and 3 would meet the 40 fpm requirement, but not sensor 2). However consumers expect airflow service from a ceiling fan over a continuous area; a discontinuous set of measurements would not be representative of the service provided by a ceiling fan. Additionally, imposing a 40 fpm sensor threshold could present test repeatability issues, especially in cases where one or more sensors measure an average airflow near 40 fpm. For example, a subset of sensors meets the threshold in one test, but in a subsequent test on the same fan a different subset of sensors meets the threshold. DOE also notes that the definition for highly-decorative ceiling fans finalized in this rule is based in part on airflow (as measured using the SNOPR proposal), so incorporating this 40 fpm threshold could affect whether certain fans are categorized as highly-decorative.

In regard to ALA's alternate proposal of using enough airflow sensors to record air delivery within a circle 24 inches larger in diameter than the blade span of the ceiling fan being tested, DOE notes that in practice this would result in adding two extra airflow sensors per sensor arm to the number of sensors specified in the SNOPR, regardless of blade span. This also increases by two the total number of sensors required to be installed in the experimental set up to be able to accommodate testing of the largest small-diameter ceiling fans. Requiring two additional sensors be used during testing may therefore add additional cost burden on the order of $1,000 per sensor to the test procedure without clear evidence that this would result in a more representative measurement.

Therefore, in this final rule DOE has not implemented the proposals set forth by ALA regarding the number of air velocity sensors to be used in the airflow measurement, but requires the usage of the same number of sensors for measuring airflow of small-diameter ceiling fans that was set forth in the TP SNOPR. The number of the sensors being finalized in this test procedure final rule is in line with the number of sensors required by the current DOE and Energy Star test procedures for ceiling fans. Additionally, test labs are already accustomed to testing ceiling fans per the current DOE and Energy Star test procedures, and so retaining the same number of sensors in this final rule would not add any additional test burden.

3. Specification of Method of Measuring the Distance Between Ceiling Fan Blades and Air Velocity Sensors During Testing

In the October 2014 test procedure NOPR, DOE proposed to specify that the appropriate vertical position of LSSD ceiling fans in relation to the air velocity sensors should be determined by the position of the lowest point on the ceiling fan blades, rather than "the middle of the fan blade tips." DOE proposed this because it may be unclear how the "middle of blade tip" measurement specified in the previous test procedure should be made for ceiling fans having non-flat or unusually shaped blades. BAS expressed agreement with this proposal, and no stakeholders expressed disagreement. (BAS, Public Meeting Transcript, No. 83 at p. 132)

Additionally, DOE notes that because HSSD ceiling fans are required to be tested according to the same test procedure prescribed for LSSD ceiling fans, with the exception that only high speed will be tested for HSSD fans (see the discussion in Section III.D.2), this clarification also applies to testing HSSD ceiling fans. DOE, therefore, requires that the appropriate vertical position for LSSD and HSSD ceiling fans (hereinafter collectively referred to as small-diameter ceiling fans) in relation to the air velocity sensors be determined by the position of the lowest point on the ceiling fan blades.

4. Specification of Fan Configuration During Testing

In the October 2014 test procedure NOPR, DOE proposed that if a fan has more than one mounting option that would meet the configuration associated with the definition of a standard ceiling fan (see section III.A.4), that ceiling fan should be tested in the configuration with the smallest distance between the ceiling and the lowest point of the fan blades. Similarly, if a fan has more than one mounting option that would meet the configuration associated with the definition of a hugger ceiling fan (see section III.A.4), that ceiling fan should be tested in the configuration with the smallest distance between the ceiling and the lowest point of the fan blades. DOE received general agreement with this proposal from Westinghouse Lighting, because all ceiling fans would receive equitable treatment (*i.e.*, tested in the same relative configuration). (Westinghouse Lighting, Public Meeting Transcript, No. 83 at pp. 132–134) Therefore, in this final rule DOE adopts the proposal from the October 2014 test procedure NOPR: Small-diameter ceiling fans that can be mounted in more than one configuration that meets the standard or hugger ceiling fan definition are required to be tested in the configuration that minimizes the distance between the ceiling and lowest part of the fan blades.

5. Specification of Test Method for Ceiling Fans With Heaters

In the October 2014 test procedure NOPR, DOE proposed that during testing any heater packaged with a ceiling fan should be installed, because an object hanging directly below the fan blades might affect airflow, but switched off. The single stakeholder comment DOE received from Hunter on this proposal was supportive. (Hunter, Public Meeting Transcript, No. 83 at pp. 135) Therefore, DOE requires any heaters packaged with ceiling fans to be installed but switched off during testing.

6. Specification on Mounting Fans to Real Ceiling for Testing

In the test procedure SNOPR, DOE proposed to require that all small-diameter ceiling fans be mounted to the real ceiling (rather than a false ceiling) for testing. One of the reasons that DOE cited for this proposal was data supplied by BAS in response to the October 2014 test procedure NOPR indicating a decrease in measured efficiency performance when a ceiling fan is mounted to a false ceiling rather than a real ceiling. (BAS, Public Meeting Transcript, No. 5 at pp. 125–126) Other stakeholders expressed agreement with mounting ceiling fans to the real ceiling during testing in the test procedure NOPR public meeting. (Fanimation, Public Meeting Transcript, No. 5 at pp. 129; Minka Group, Public Meeting Transcript, No. 5 at pp. 129) However, ALA requested DOE conduct further testing at an independent test lab to confirm the results supplied by BAS before finalizing a requirement to test with the ceiling fans mounted to the real ceiling. (ALA, No. 14 at pp. 4–5)

DOE performed additional testing of ceiling fans provided by a number of manufacturers in December 2015. For this testing, DOE mounted the ceiling fan to the real ceiling, and adjusted the height of the air velocity sensors, as proposed in the SNOPR. DOE testing confirmed a decrease in measured efficiency when a ceiling fan is mounted to a false ceiling rather than a real ceiling. Based on the testing, DOE concludes that no significant additional test burden will be added by testing ceiling fans mounted to the real ceiling and adjusting the height of the air velocity sensors, relative to mounting the ceiling fans to a false ceiling, keeping the air velocity sensors stationary, and adjusting the height of the false ceiling. There is a one-time cost needed to set up the sensor arms such that the height of the air velocity sensors can be adjusted for all ceiling fans. However, once this has been set-up, there is no additional test burden. Additionally, testing ceiling fans mounted to the real ceiling is more representative of actual use than testing the ceiling fans mounted to a false ceiling. For these reasons, DOE requires mounting the ceiling fan to the real ceiling for testing small-diameter ceiling fans. DOE notes that because HSSD ceiling fans are required to be tested according to the same test procedure prescribed for LSSD ceiling fans, with the exception that only high speed will be tested for HSSD fans (see the discussion in Section III.D.2), this requirement applies to all small-diameter ceiling fans.

7. Revised Allowable Measurement Tolerance for Air Velocity Sensors

In the October 2014 test procedure NOPR, DOE proposed to change the air velocity sensor measurement tolerances from the current test procedure (based on ENERGY STAR guidance manual v1.1) value of 1% to 5%, the stringency required by ENERGY STAR guidance manual v1.2. Hunter and ALA supported this proposal, and no stakeholders opposed the proposal. (Hunter, Public Meeting Transcript, No. 83 at p. 136; ALA, No. 8 at p. 8) Therefore, DOE requires an air velocity sensor measurement tolerance not to exceed 5% for testing small-diameter ceiling fans. It is worth noting that the ENERGY STAR guidance manuals explicitly list "suggested equipment", including air velocity sensors, to be used for ENERGY STAR testing. The test procedure established by this final rule includes equipment specifications, including tolerances, but does not list specific equipment. Note that some "suggested equipment" in the ENERGY STAR guidance manuals may not meet the equipment specifications included in this test procedure, so testing laboratories should check their equipment and ensure that it is capable of meeting the specifications being adopted in this final rule.

8. Revised Allowable Mounting Tolerance for Air Velocity Sensors

The proposed regulatory text for testing small-diameter ceiling fans in the test procedure SNOPR required mounting the air velocity sensors every four inches along each sensor arm, as specified in the current ENERGY STAR test procedure. BAS suggested DOE alter this requirement to specify a tolerance of 1/16″. (BAS, No. 13 at p. 6) DOE agrees that having a specified tolerance for the air velocity sensor mounting interval is useful and would not significantly alter the measured test results; therefore, in this final rule DOE specifies the air velocity sensors be mounted every 4″ ± 1/16″ along the sensor arm.

9. Specifications To Reduce Testing Variation

ALA commented that there are problems with variation in the results of DOE's proposed ceiling fan test procedure that will raise the cost of manufacturer compliance. ALA's members observed these issues by testing the same ceiling fan at different test labs and by testing identical ceiling fans at the same test lab. According to ALA, separate tests of the same ceiling fan at different test labs produced test results that vary by as much as 31 percent; and separate tests of identical ceiling fans at the same test lab produced results that vary by as much as 15 percent. ALA stated that the variability in test results is beyond commercially reasonable tolerances for ceiling fan manufacturers. They concluded that these problems will effectively require manufacturers to adopt much larger-than-customary "safety factors" in their ceiling fan design and development processes to ensure that the significant variation in test results will not result in finding of noncompliance by DOE. (ALA, No. 139 at pp. 5–6)

Lutron commented that while they do not manufacture ceiling fans, they agree with the concerns of the fan industry with regard to the impact of changing test procedures and the concerns over data consistency. (Lutron, No. 141 at p. 3)

In response to these concerns, DOE conducted a thorough review of all available test data to identify opportunities to decrease testing variation. During this review, DOE found that sudden temperature variations in the test room are the primary driver of test result variations. The hot-wire anemometer sensors typically used to measure air velocity sense a change in temperature induced by the flow of air. Hot-wire anemometer sensors must have the ability to store heat, a property known as thermal mass, to make such measurements. The rate at which a hot-wire anemometer loses stored heat to air flowing at a given velocity is fixed based on the hot-wire anemometer's physical and material properties. If the rate at which the hot-wire anemometer loses stored heat is different than the rate at which the temperature in the test room is changing, the measurements of that hot-wire anemometer will vary. While the hot-wire anemometers typically have temperature compensating functions, the thermal mass of a hot-wire anemometer is not capable of compensating for sudden changes. In the context of this test procedure, the air velocity measured by a sensor may vary markedly if the temperature in the test room has changed significantly and quickly between measurements. Consequently, test results may vary significantly.

DOE considered many options to address the temperature control and air velocity measurement issues, including alternative air velocity sensors and changes to test room specifications related to temperature control. DOE determined that hot-wire anemometers are still the preferred sensor for air velocity measurements. DOE did not find an alternative air velocity measurement sensor type or apparatus that would produce significantly better air velocity measurements at similar cost, effectiveness, or industry familiarity. In addition, changes to the test room specifications related to temperature control could result in additional test burden due to capital investment in new equipment or test room renovations. Ultimately, DOE found in its review of available test data that average air velocity measurements did not vary significantly between axes for all tests. This leads DOE to believe that reducing variation is achievable without using alternative air velocity sensors or specifying significant changes to the test room and equipment. Instead, in this final rule, DOE is adopting the following provisions to minimize test procedure output variation:

- Specifying criteria for air velocity and power measurements that indicate stable measurements.
- Require measurement axes be perpendicular to test room walls.
- Require forced-air space conditioning equipment be turned off during air velocity measurements, but allow for conditioning equipment that does not supply air to the test room, such as radiant conditioning equipment, to be left on.
- Require voltage be measured within 6 inches of connection supplied with fan.

These provisions are modifications to those proposed in the June 2015 test procedure SNOPR. The June 2015 SNOPR proposed air velocity and power measurements and tolerances on each. A lab should be able to measure air velocity and power in the same way it would have per the test procedure proposed in the SNOPR. 80 FR 31500–31502 (June 3, 2015) The stability criteria established by this final rule specify that air velocity and power be measured until variation in those measurements is satisfactorily limited. The SNOPR proposed axes be perpendicular to walls or directed into corners. 80 FR 31500, 31501 (June 3, 2015) This document maintains the requirement for axes perpendicular to walls but disallows axes directed into the corners because of a higher degree of observed output variation when using this configuration. The SNOPR proposed to turn off space-conditioning equipment during air velocity measurements. 80 FR 31501 (June 3, 2015) This document maintains that requirement for forced-air equipment, but allows non-forced-air equipment to remain on. This allowance is a zero-burden method for improving temperature control and in turn, minimizing test result variation. The SNOPR proposed voltage measurements. 80 FR 31501 (June 3, 2015) This document clarifies where this measurement should be taken to minimize test result variation. DOE does not expect these provisions to change measured efficiency, only improve measurement repeatability. Also, DOE does not expect these provisions to result in significant increases in test burden.

In this final rule, DOE is establishing stability criteria to minimize test result variation. These stability criteria are in terms of acceptable air velocity and power measurement variation. Subsequent measurements must be made until stable measurements are achieved. Stable measurements are achieved when: (1) The average air velocity for all axes for each sensor varies by less than 5% compared to the average air velocity measured for that same sensor in a successive set of air velocity measurements, and (2) average power consumption varies by less than 1% in a successive set of power consumption measurements. Variations that do not meet those criteria indicate that a significant change in temperature likely occurred during the test and results will vary too significantly. DOE is adopting a provision that measurements that do not meet the definition of stable measurements are prohibited from being used in the test result. Instead, this final rule specifies that the measurement of air velocity and power be repeated until stable measurements are achieved. DOE understands that this will result in tests that require at least two iterations of measurements in each axis for each speed tested to achieve stable measurements and a valid test. These iterations represent additional test time and therefore burden. Each additional axis is 100 additional seconds plus the time it may take a sensor arm to travel to another axis if a single, sweeping sensor arm is being used. DOE estimates additional measurements to meet stability criteria to be less than 10 minutes total for four additional axes of measurements (*i.e.*, one additional iteration). Even if two additional measurements in all 4 axes are necessary for each speed, 40 minutes (two iterations multiplied by 10 minutes multiplied by two speeds) of additional test time is not a significant increase in overall test time which is roughly 3 hours including set up and warm up periods and one iteration of air velocity and power measurements per speed tested. DOE recognizes that some labs may need to make investments in facility upgrades to improve temperature control to meet these stability criteria. These upgrades could include low-cost weatherization techniques like adding weather stripping to test-room doors or adding insulation, or more costly improvements like switching from forced-air to non-forced-air space-conditioning equipment. DOE testing indicates that these stability requirements can be met in labs that performed testing per the test procedure proposed in the SNOPR and the ENERGY STAR test procedure using forced-air conditioning equipment. Therefore, these stability provisions do not require significant investment in changes to the lab set up compared to test procedures that the industry is already using.

Requiring measurement axes to be perpendicular to test room walls will reduce air swirl patterns that can occur in test room corners and potentially lead to unstable test measurements. This provision should not result in any additional test burden because no additional time or materials are needed.

Requiring forced-air space conditioning equipment be turned off during air velocity measurements, but allowing for conditioning equipment that does not supply air to the test room to be left on, is similar to what DOE proposed in the SNOPR. The difference in the provision being adopted in this final rule and the SNOPR proposal is that forced-air and non-forced air space conditioning equipment are differentiated and non-forced air space conditioning equipment can be left on during air velocity measurements. Allowing non-forced air space conditioning equipment to operate during air velocity measurements will help keep test room temperature conditions stable. Allowing forced-air space conditioning equipment to remain on during air velocity measurements may also help keep test room temperature stable, but the air supplied to the room from this equipment can interfere with air velocity measurements. Any lab already using non forced-air space conditioning equipment should not experience additional burden from this provision. Through testing, DOE also determined that labs that use forced-air conditioning equipment can produce stable test results despite turning off the forced-air equipment. Such facilities will also not require additional time or materials to test as a result of this provision.

Requiring test voltage be measured within 6 inches of the connection supplied with the fan avoids variations in measurements that may result from measuring voltage at varying distances from the supplied connection. Wires have losses that are proportional to length. Consequently, a voltage measurement taken 12 inches from the supplied connection will be different than a measurement taken 6 inches from the supplied connection. Putting limits on the distance of the voltage measurement will minimize differences in test results that may otherwise result between test labs or iterations of the test in a given lab.

10. Revised Testing Temperature Requirement

In the test procedure SNOPR, the proposed regulatory text for testing small-diameter ceiling fans required the air delivery room temperature be kept at 76 F ± 2 F during testing, which is in line with the current DOE test procedure for ceiling fans (which is based on the ENERGY STAR test procedure v. 1.1). BAS suggested DOE update this requirement to 70 F ± 5 F, which aligns with the ENERGY STAR test procedure v. 1.2. BAS indicated that tightening the air temperature requirements results in significant burden on the test lab, and also noted that the anemometers and associated software used by the test labs automatically correct for changes in temperature and humidity. (BAS, No. 13 at p. 7) DOE has concluded that relaxing the temperature requirement from 76 F ± 2 F to 70 F ± 5 F will not significantly impact the measured test results if stable measurement criteria are achieved and will align with the requirements of the current industry-standard test procedure; therefore, in this final rule, DOE specifies the air delivery room temperature to be 70 F ± 5 F during testing. Stable measurement criteria are described in more detail in section III.E.9.

11. Specification of Air Delivery Room Doors and Air Conditioning Vents

The proposed regulatory text for testing of small-diameter ceiling fans in the test procedure SNOPR indicates that the air delivery room's air conditioning vents must be closed three minutes prior to and during testing. BAS suggested DOE update this language to indicate that air delivery room doors should also be closed during testing, but that the air conditioning vents and doors may be open between test sessions to maintain space conditions. (BAS, No. 13 at p. 7) DOE agrees with BAS's suggestion, and notes that further down in that same section of the regulatory text the procedure requires the test lab to "close all doors and vents." In this final rule, DOE requires that all doors and vents must be closed three minutes prior to and during testing, but that they may be opened when testing is not taking place (*e.g.*, between testing different speeds of a ceiling fan, or between testing different ceiling fans) to maintain space conditions. Better maintaining space conditions by allowing doors and vents to be open as often and long as possible except for three minutes prior and during testing will facilitate achieving the stability criteria established by this document, as discussed in section III.E.9.

12. Specification of Power Source and Measurement

The proposed regulatory text for testing all fans in the test procedure SNOPR instructs the test lab to measure power consumption of the fan, but it does not specify how the fan power should be measured in the case of fans operated with multi-phase electricity. BAS suggested DOE specify that active (real) power be measured in all phases simultaneously, as many large-diameter ceiling fans are operated with three-phase electricity. (BAS, No. 13 at p. 8) DOE agrees with BAS's suggestion, which will alleviate any confusion from measuring power consumption of fans utilizing multi-phase electricity. DOE also notes that this requirement aligns with the power measurement requirements set forth in AMCA 230–15. In this final rule, DOE specifies that active (real) power must be measured simultaneously in all phases for all ceiling fans required to be tested using the test procedure.

The test procedure SNOPR also instructs that the tests be conducted with the fan connected to a supply circuit with a specific voltage according to the fan's rating (120 V or 240 V), but it does not specify how to test fans that are rated for use with both single-phase and multi-phase electricity. AMCA and BAS made the following suggestions: (1) Test voltage at the rated voltage of the variable-speed device, or the rated voltage of the motor if no variable-speed control exists; (2) test the fan at the mean input voltage if a voltage range is specified; (3) test and rate fans capable of operating with single- and multi-phase power under both conditions; and (4) test fans with multiple voltage ranges, but the same phase power, at the mean of the lowest input voltage range. (AMCA, No. 140 at p. 3; BAS, No. 138 at pp. 16–20) [18]

DOE appreciates the comments received regarding test input voltage, and agrees that a provision should be made to test certain fans that are not rated for use with 120 V or 240 V. DOE also agrees that if multiple voltage ranges are specified for a given ceiling fan, the ceiling fan should be tested according to the lower voltage range. DOE therefore finalizes the following supply voltage requirements for all tested ceiling fans: The supply voltage must be: (1) 120 V if the ceiling fan's minimum rated voltage is 120 V or the lowest rated voltage range contains 120 V, (2) 240 V if the ceiling fan's minimum rated voltage is 240 V or the lowest rated voltage range contains 240 V, or (3) the ceiling fan's minimum rated voltage (if a voltage range is not given) or the mean of the lowest rated voltage range, in all other cases.

In regard to the comments about testing and rating ceiling fans that can be operated on both single- and multi-phase power under both conditions, DOE has determined that LSSD and HSSD fans are typically operated on single-phase circuits whereas large diameter fans are typically operated on multi-phase circuits. Therefore, DOE specifies in this final rule that LSSD and HSSD fans capable of operating with single- and multi-phase power be tested with single-phase power, and large diameter fans capable of operating with single- and multi-phase power be tested with multi-phase power. DOE will further allow manufacturers to test such fans in the other configuration (*i.e.*, using multi-phase power for LSSD and HSSD fans and single-phase power for large diameter fans) and make representations of efficiency associated with both single and multi-phase electricity if a manufacturer desires to do so, but the test results in this configuration will not be valid to assess compliance with any amended energy conservation standard. DOE also clarifies that any ceiling fan rated to operate on only single-phase power must be tested and rated at single-phase power. Similarly, any ceiling fan rated to operate on only multi-phase power must be tested and rated at multi-phase power.

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[18] Both documents were submitted to the docket of DOE's rulemaking to develop energy conservation standards for ceiling fans (Docket No. EERE–2012–BT–STD–0045).

13. Specification of Blade Span Measurement

The proposed regulatory text for testing all fans in the test procedure SNOPR instructs the test lab to conduct the appropriate test procedure based, in part, on the blade span of the ceiling fan, but it does not clearly articulate if or how the blade span is to be measured. BAS suggested that the blade span of a particular ceiling fan be determined as follows: (1) The blade span should be defined as the diameter of the largest circle swept by any part of the fan blade assembly, including any blade attachments; and (2) The rated blade span of a particular ceiling fan should be the average or the larger of the measured blade spans of the multiple samples required for testing. (BAS, No. 138[19] at pp. 16–17) DOE concludes that the blade span of a ceiling fan is the diameter of the largest circle swept by any part of the fan blade assembly, including any blade attachments. Furthermore, DOE agrees that the average measured blade span of the tested ceiling fan samples, rounded to the nearest inch, be used for determining a ceiling fan's product class and the number of air velocity sensors required (in the case of an LSSD fan), rather than using the ceiling fan's rated blade span (which in some cases may not be publicly advertised). Therefore, for the purposes of this final rule test procedure, DOE requires that the blade span of a ceiling fan be the average of the measurements of the diameter of the largest circle swept by any part of the fan blade assembly (including any blade attachments) of the tested samples, rounded to the nearest inch.

F. Additional Test Methods

1. Test Method for Large-Diameter Ceiling Fans

In the October 2014 test procedure NOPR, DOE proposed to incorporate AMCA 230–12 by reference. An updated version of AMCA 230 published on October 16, 2015. DOE is incorporating by reference AMCA 230–15 in this final rule. The test procedure specified in AMCA 230–15 is fundamentally equivalent to the test procedure specified in AMCA 230–12 (*i.e.*, both test procedures use thrust, as measured by a load cell, to determine a ceiling fan's airflow), with a few notable differences: (1) AMCA 230–15 is applicable to ceiling fans of all blade spans, whereas AMCA 230–12 was only applicable to ceiling fans with blade spans less than or equal to 6 feet; (2) AMCA 230–15 specifies the number of speeds to test, whereas AMCA 230–12 did not provide such a specification; and (3) AMCA 230–15 has updated test room dimensions relative to AMCA 230–12. In the test procedure SNOPR, DOE proposed to limit the applicable blade span to less than or equal to 24 feet, to align with the anticipated number of speeds to test to be specified in AMCA 230–15, and to align with the anticipated test room dimensions to be specified in AMCA 230–15. (Anticipated changes to AMCA 230 were based on comments from AMCA (AMCA, No. 84[20] at p. 2.))

In regard to the test procedure SNOPR proposal to limit the blade span applicable for testing to 24 feet, BAS suggested that DOE not have a maximum blade span limit at all, which would align with AMCA 230–15. (BAS, No. 13 at p. 7) DOE notes that it is currently unaware of any commercially-available large-diameter fans with blade spans greater than 24 feet. Because larger ceiling fans are not currently commercially available, DOE cannot confirm that that the test procedure will produce reliable results for fans larger than 24 feet in diameter. In addition, DOE prefers to align the scope of the test procedure with the scope of the concurrent energy conservation standards rulemaking for ceiling fans, which includes fans with blade spans less than or equal to 24 feet. Therefore, in this final rule DOE confirms that the test procedure is applicable to ceiling fans up to 24 feet in diameter.

BAS supported the test room dimensions proposed in the SNOPR and no stakeholders expressed disagreement. (BAS, No. 13 at p. 6) In this final rule DOE requires the following test room dimensions for large-diameter ceiling fans: (1) The minimum distance between the ceiling and the blades of a ceiling fan being tested shall be 40% of the ceiling fan blade span; (2) the minimum distance between the floor and the blades of the fan shall be the larger of 80% of the ceiling fan blade span or 4.6 m;[21] and (3) the minimum distance between the centerline of a ceiling fan and walls and/or large obstructions is 150% of the ceiling fan blade span.

DOE also notes that the efficiency metric for large-diameter ceiling fans is to be calculated based on the fan efficiency at up to five speeds (see the discussion provided in Section III.D.3). Table 2 provides the requirements for selecting which speeds to test and how to weight the efficiency results at each tested speed for calculating the weighted efficiency metric.[22]

TABLE 2—REQUIREMENTS FOR TESTING LARGE-DIAMETER CEILING FANS

Available speeds	Number of speeds to test	Which speeds to test	Efficiency metric weighting for each speed ** (%)
1	All	All	100
2	All	All	50
3	All	All	33
4	All	All	25
5	All	All	20
6+ (discrete)	5	5 fastest speeds	20

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[19] This document was submitted to the docket of DOE's rulemaking to develop energy conservation standards for ceiling fans (Docket No. EERE–2012–BT–STD–0045).

[20] This document was submitted to the docket of DOE's rulemaking to develop energy conservation standards for ceiling fans (Docket No. EERE–2012–BT–STD–0045).

[21] In the SNOPR, DOE proposed a minimum distance between the floor and the blades of the ceiling fan as the larger of 80% of the ceiling fan blade span or 15 feet, based on comments submitted by BAS and AMCA indicating this would be the requirement set forth in AMCA 230–15. However, the AMCA 230–15 requirement indicates 80% of the ceiling fan blade span or 4.6 m for this requirement. 4.6 m is approximately 15.1 feet, so the difference between the SNOPR proposal and AMCA 230–15 is trivial.

[22] The percentages in the final row of the "Which Speeds to Test" column in Table 2 are based on the RPM at the fastest speed setting (*e.g.*, 80% speed corresponds to 80% of the measured RPM at the fastest speed).

TABLE 2—REQUIREMENTS FOR TESTING LARGE-DIAMETER CEILING FANS—Continued

Available speeds	Number of speeds to test	Which speeds to test	Efficiency metric weighting for each speed ** (%)
Infinite (continuous) *	5	100% (max) speed 80% speed 60% speed 40% speed 20% speed	20

* This corresponds to a ceiling fan, such as a ceiling fan with a variable-frequency drive (VFD), which operates over a continuous (rather than discrete) range of speeds.

** All tested speeds are to be weighted equally. Therefore, the weighting shown here for a ceiling fan with three available speeds is approximate.

Therefore, DOE requires all large-diameter ceiling fans to be tested according to AMCA 230–15, but with the modification that the number of speeds to be tested is as set forth in Table 2.

2. Test Method for Multi-Mount Ceiling Fans

Because multi-mount ceiling fans can be installed in configurations associated with both standard and hugger ceiling fans, DOE proposed in the October 2014 test procedure NOPR to test multi-mount ceiling fans in both configurations: (1) In the configuration associated with standard ceiling fans, while minimizing the distance between the ceiling and the lowest part of the fan blades, and (2) in the configuration associated with hugger ceiling fans, while minimizing the distance between the ceiling and the lowest part of the fan blades. DOE received feedback from BAS indicating agreement with this proposal. (BAS, Public Meeting Transcript, No. 83 at p. 81) However, ALA suggested DOE revise this proposal to allow manufacturers to choose to test multi-mount fans in either both configurations or only the configuration associated with hugger ceiling fans, as that configuration should provide a conservative measured efficiency when compared to the efficiency measurement in the configuration associated with standard ceiling fans. (ALA, No. 8 at p. 8)

AcuPoll survey data submitted by ALA suggest that a significant fraction of multi-mount ceiling fans are installed in the configuration associated with hugger fans and a significant fraction are installed in the configuration associated with standard fans, and DOE cannot know the installation configuration *a priori*.[23] Because consumers may install multi-mount fans in either configuration, DOE believes testing these fans in both configurations provides the most representative measurement of efficiency.

3. Test Method for Ceiling Fans With Multiple Fan Heads

In the October 2014 test procedure NOPR, DOE proposed to test ceiling fans with multiple fan heads according to the following: (1) A single fan head is to be tested, with the fan head in the same position as when a fan with a single head is tested, such that it is directly over sensor 1 (*i.e.*, at the center of the test set-up, where the four sensor axes meet); (2) the effective blade span is the blade span of an individual fan head (if all fan heads are the same size) or the blade span of the largest fan head (if the fan heads are of various sizes); (3) the distance between the air velocity sensors and the fan blades of the centered fan head should be the same as for all other small-diameter ceiling fans; (4) the airflow measurements should be made in the same manner as for all other LSSD ceiling fans, but with only the centered fan head switched on; (5) at least one of each unique category of fan head is to be tested for ceiling fans that include more than one category of fan head (if all the fan heads are the same, then only one fan head needs to be tested); (6) the total airflow is to be determined by multiplying the airflow results of an individual fan head by the number of fan heads of that category (and summing over all of the categories of heads); (7) the power consumption at a given speed is to be measured with all fan heads switched on.

In response, multiple stakeholders expressed agreement with DOE's proposal. (Fanimation, Public Meeting Transcript, No. 83 at p. 138; Matthews Fan Company, Public Meeting Transcript, No. 83 at p. 138; Minka Group, Public Meeting Transcript, No. 83 at p. 138; ALA, No. 8 at p. 8) Therefore, DOE requires all multi-head ceiling fans to be tested in accordance with the aforementioned provisions proposed in the October 2014 test procedure NOPR.

4. Test Method for Ceiling Fans Where the Airflow Is Not Directed Vertically

In the October 2014 test procedure NOPR, for ceiling fans where the airflow is not directed vertically, DOE proposed to adjust the ceiling fan head such that the airflow is as vertical as possible and oriented along one of the four sensor axes. In this proposal, the distances between the lowest point on the fan blades and the air velocity sensors should be the same as for all other LSSD ceiling fans. Then, instead of measuring the air velocity for only those sensors directly beneath the ceiling fan, the air velocity should be measured at all sensors along the axis for which the airflow is oriented, as well as the axis oriented 180 degrees with respect to that axis. Using the same total number of sensors as would be utilized if the airflow was directly downward, the airflow should be calculated based on the continuous set of sensors with the largest air velocity measurements. The effective area used to calculate airflow under this proposal would be the same as for an un-tilted ceiling fan with the same blade span.

In response to this proposal, Fanimation expressed agreement, and no other stakeholders provided comment. (Fanimation, Public Meeting Transcript, No. 83 at p. 140) In this final rule, DOE requires ceiling fans where the airflow is not directed vertically to be tested in accordance with the aforementioned provisions proposed in the October 2014 test procedure NOPR.

5. Test Method for Power Consumption in Standby Mode

In the 2014 test procedure NOPR, DOE proposed to add standby mode power consumption testing for all ceiling fans sold with hardware to maintain any of the standby functions defined in 42 U.S.C. 6295(gg)(1)(A)(iii)(II) either (1) installed in the body of the ceiling fan, or the ceiling fan light kit packaged with it, prior to sale, or (2) packaged with the ceiling fan, and which is the sole means of operating the ceiling fan. DOE proposed to perform the standby test following the active mode test in accordance with the procedure in IEC standard 62301:2011. Because IEC 62301:2011 would add at least 40 minutes to the test procedure for ceiling fans subject to standby mode testing, DOE proposed to reduce the IEC 62301:2011-specified interval of time over which testing occurs and period of time prior to conducting the standby testing. Specifically, DOE proposed to wait three minutes after active mode functionality has been switched off to begin the standby mode test and then to collect power consumption data in standby mode for 100 seconds.

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[23] AcuPOLL® Precision Research, Inc. *Survey of Consumer Ceiling Fan Usage and Operations.* 2013.

All stakeholders expressed agreement with DOE's proposal to include standby testing. However, BAS noted that the proposed method of incorporating standby power losses into the airflow efficiency metric could penalize very efficient ceiling fans while boosting the efficiency of lower-efficiency ceiling fans, and BAS provided example data for support. (BAS, Public Meeting Transcript, No. 5 at pp. 100–102)

DOE appreciates BAS's review of the proposed method for incorporating standby loss into the airflow efficiency metric; however, DOE notes that BAS's assertion that high-efficiency ceiling fans are disproportionately penalized for any standby consumption is based on a comparison of the measured efficiency calculated using the existing ENERGY STAR test procedure and the measured efficiency calculated using the test procedure proposed in the October 2014 test procedure NOPR. Using this comparison, BAS found that an efficient ceiling fan having 1.5 W of power consumption in standby mode has a calculated efficiency approximately 13% lower than the efficiency calculated using the current ENERGY STAR test method. BAS also found that less efficient ceiling fans with standby power consumption actually received an increase in calculated efficiency using the proposed test method. When comparing the measured efficiency using the proposed test method with and without standby, however, DOE concluded that all ceiling fans with standby power consumption receive an efficiency penalty relative to the calculated efficiency assuming no standby power consumption. DOE notes that this approach penalizes more efficient ceiling fans more than less efficient ceiling fans for an equal amount of standby power consumption; however, this reflects the fact that equivalent standby power consumption represents a larger fraction of the overall power consumption for more efficient ceiling fans. In other words, the effect of including standby power consumption for a more efficient fan is not greater in absolute terms, but rather greater only relative to the energy used by that fan in active mode. This is a result of incorporating standby mode into any integrated efficiency metric, as required by 42 U.S.C. 6295(gg)(2). Therefore, DOE retains the method proposed in the October 2014 test procedure NOPR for incorporating standby power consumption into the integrated efficiency metric.

G. Certification and Enforcement

Ceiling fan manufacturers must submit certification reports for each basic model before it is distributed in commerce per 10 CFR 429.12. Components of similar design may be substituted without additional testing, if the substitution does not affect the energy consumption of the ceiling fan. (10 CFR 429.11) Ceiling fan certification reports must follow the product-specific sampling and reporting requirements specified in 10 CFR 429.32. Consistent with the dates specified for use in section III.B, ceiling fan manufacturers are required to calculate ceiling fan efficiency utilizing the calculations provided in revised appendix U. Upon the compliance date of any amended energy conservation standards for ceiling fans, manufacturers would be required to follow the revised reporting requirements provided at 10 CFR 429.32 for each ceiling fan basic model.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget has determined that test procedure rulemakings do not constitute "significant regulatory actions" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that when an agency promulgates a final rule under 5 U.S.C. 553, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a final regulatory flexibility analysis (FRFA). As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003 to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://energy.gov/gc/office-general-counsel.*

DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. The final rule prescribes test procedure amendments that would be used to determine compliance with any amended energy conservation standards that DOE may prescribe for ceiling fans. DOE has prepared a final regulatory flexibility analysis (FRFA) for this rulemaking. The FRFA describes potential impacts on small businesses associated with ceiling fan testing requirements.

DOE has transmitted a copy of this FRFA to the Chief Counsel for Advocacy of the Small Business Administration for review.

1. Description of the Need For, and Objectives of, the Rule

A description of the need for, and objectives of, the rule is set forth elsewhere in the preamble and not repeated here.

2. Description of Significant Issues Raised by Public Comment

DOE received no comments specifically on the initial regulatory flexibility analysis prepared for this rulemaking. Comments on the economic impacts of the rule are discussed elsewhere in the preamble and did not necessitate changes to the analysis required by the Regulatory Flexibility Act.

3. Description of Comments Submitted by the Small Business Administration

The Small Business Administration did not submit comments on DOE's proposed rule.

4. Description of Estimated Number of Small Entities Regulated

For the manufacturers of the covered ceiling fan products, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as "small businesses" for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. See 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at: *https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf*. Ceiling fan manufacturing is classified under NAICS code 335210, "Small Electrical Appliance Manufacturing." The SBA sets a threshold for NAICS classification for 335210 of 1,500 employees or less.[24]

DOE reviewed ALA's list of ceiling fan manufacturers,[25] the ENERGY STAR Product Databases for Ceiling Fans,[26] the California Energy Commission's Appliance Database for Ceiling Fans,[27] and the Federal Trade Commission's Appliance Energy Database for Ceiling Fans.[28] Based on this review, using data on the companies for which DOE was able to obtain information on the numbers of employees, DOE identified 66 companies that sell ceiling fans covered by this test procedure. 25 of these companies are large businesses with more than 1,500 total employees. DOE determined that of the remaining 41 companies with less than 1,500 employees, only six companies are small businesses that maintain domestic production facilities. Of the six small ceiling fan businesses, four manufacture HSSD ceiling fans and three manufacture large-diameter ceiling fans.[29]

5. Description of the Projected Compliance Requirements of the Final Rule

a. Additional Fans Required To Be Tested

In the ceiling fan light kit test procedure final rule, DOE reinterpreted the EPCA definition of ceiling fan to include hugger fans and stated that ceiling fans that produce large volumes of airflow (*i.e.*, large-diameter ceiling fans) also meet the EPCA definition. 80 FR 80209 (Dec. 24, 2015) The changes in interpretation of the ceiling fan definition discussed above result in the applicability of the design standards set forth in EPCA at 42 U.S.C. 6295(ff)(1) to the following types of fans 30 days after the publication of the ceiling fan light kit final test procedure, which is January 25, 2016. 80 FR 80209 (Dec. 24, 2015).

DOE research indicates that all ceiling fans currently on the market, including large-diameter ceiling fans, appear to meet the EPCA design standards. For large-diameter ceiling fans, DOE searched for product specifications on the Web sites of manufacturers of large-diameter ceiling fans and from Web sites of retailers of HSSD ceiling fans. Only one large-diameter ceiling fan model was found with a light kit, and the fan controls were separate from the lighting controls for that fan. Most large-diameter ceiling fans appeared to be capable of operating at more than one speed (typically with an adjustable speed control).

Based on this research, DOE does not expect any cost of complying with the design requirements for small business manufacturers of large-diameter ceiling fans. DOE discusses the costs of testing in the following section.

b. Projected Testing Costs

DOE establishes test procedures that measure energy efficiency or energy use of a representative average use cycle for a given product, and that are not unduly burdensome to conduct. If the concurrent rulemaking regarding energy conservation standards for ceiling fans results in efficiency performance standards, DOE would require testing for certification of two ceiling fans per basic model, the minimum sample size required by 10 CFR 429.11. To determine the potential cost of the final test procedure on small ceiling fan manufacturers of HSSD and large-diameter ceiling fans under a potential energy conservation standard for ceiling fans, DOE estimated the cost of testing two ceiling fans. The cost of testing was then multiplied over the estimated number of basic models produced by a small manufacturer. The estimated cost of testing HSSD and large-diameter ceiling fans is discussed in further detail below.

High-Speed Small-Diameter Ceiling Fans

DOE estimated the cost to test HSSD ceiling fans, based on estimates from third-party testing facilities of the cost to perform the current ENERGY STAR test procedure for ceiling fans, which is similar to DOE's final test procedure, and the changes in cost associated with the key differences between the two test procedures. DOE expects that the following modifications would impose a change in test burden compared to the current ENERGY STAR test procedure: (1) The requirement to test at only one fan speed instead of three speeds; (2) the elimination of the requirement to use a test cylinder; (3) the requirement to mount the ceiling fan to the real ceiling; (4) the reduced warm up time before testing at low speed, (5) the requirement to conduct standby-mode testing, and (6) specifying criteria for air velocity and power measurements that indicate stable measurements. In total, DOE estimates that these changes reduce the typical time to perform the final test procedure by one hour compared to the ENERGY STAR test procedure, as described below.

(1) Testing at only one speed instead of three yields a total test time that is approximately 70 minutes shorter than the ENERGY STAR test procedure. DOE specifies that only high speed is to be tested. Based on test quotes from third-party labs, DOE estimates that the average cost for each speed is $87.50 per speed. Therefore, testing at only one speed instead of three reduces the total test cost by $175 per ceiling fan.

(2) Not requiring use of a test cylinder eliminates any potential costs associated with purchasing new test cylinders. If the test procedure required the use of test cylinders, then a new cylinder would be necessary to test any ceiling fan with a diameter that does not correspond to one of the cylinders in a test lab's existing inventory. Based on discussions with third-party testing facilities, DOE estimates that new test cylinders would cost approximately $2,000–3,000 per cylinder. By not using a cylinder, these costs will be avoided. Not requiring a test cylinder also shortens the test time of DOE's final test procedure relative to ENERGY STAR's test procedure for all HSSD ceiling fans, because time is not required to put a test cylinder in place for each test (estimated to take 15 minutes).

(3) Requiring mounting ceiling fans to the real ceiling involves a one-time lab cost for a mechanism that allows for the adjustment of the height of the air velocity sensors to keep the distance between the bottom of the fan blades and the air velocity sensor heads at a specified vertical distance (43 inches). Based on the materials employed and test quotes from third-party labs, DOE estimates the one-time cost to construct a mechanism to allow for the

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[24] U.S. Small Business Administration, Table of Small Business Size Standards (August 22, 2008) (Available at: *http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf*).

[25] The American Lighting Association, list of Manufacturers & Representatives (Available at: *http://www.americanlightingassoc.com/Members/Resources/Manufacturers-Representatives.aspx*).

[26] The U.S. Environmental Protection Agency and the U.S. Department of Energy, ENERGY STAR Ceiling Fans—Product Databases for Ceiling Fans (Available at: *http://www.energystar.gov/products/certified-products/detail/ceiling-fans*).

[27] The California Energy Commission, Appliance Database for Ceiling Fans (Available at: *http://www.appliances.energy.ca.gov/QuickSearch.aspx*).

[28] The Federal Trade Commission, Appliance Energy Databases for Ceiling Fans (Available at: *http://www.ftc.gov/bcp/conline/edcams/eande/appliances/ceilfan.htm*).

[29] These numbers do not add up to six because one company manufacturers both types of ceiling fans.

adjustment of the height of the air velocity sensors is less than $2,000. Once the mechanism is constructed, it can be used to test all HSSD ceiling fans, and therefore does not add substantial test cost thereafter.

(4) Requiring 15 minutes of warm up time before testing at low speed compared to 30 minutes in the ENERGY STAR test procedure further reduces the relative amount of time required for DOE's final test procedure by 15 minutes.

(5) Requiring standby-mode testing for ceiling fans with standby functionality yields an additional cost for such fans. Using the quotes provided by third-party testing facilities, DOE estimates that the standby test for all ceiling fans with standby functionality costs $200 per basic model.

(6) Specifying criteria for air velocity and power measurements that indicate stable measurements may increase test time and require one-time capital costs. If stability criteria are not met after taking air velocity and power measurements in each axis, these measurements must be repeated until stability criteria are met. Measurements in each additional axis is 100 additional seconds plus the time it may take a sensor arm to travel to another axis if a single, sweeping sensor arm is being used. DOE estimates this to be less than 10 minutes total if four additional axes of measurements are needed to meet stability criteria. Even if four additional measurements in all four axes are necessary, only 40 minutes of additional test time would be required. DOE recognizes that some labs may need to make investments in facility upgrades to improve temperature control to meet these stability criteria. These upgrades could include low-cost weatherization techniques like adding weather stripping to test-room doors or adding insulation. More costly improvements, like switching from forced-air to non-forced-air space-conditioning equipment, are unlikely but may be necessary. Even the most costly upgrade of adding insulation and switching to a non-forced-air conditioning system would only be a one-time cost on the order of $5,000. Once these upgrades to the test room are completed, they can be used to test all HSSD ceiling fans, and therefore do not add substantial test cost thereafter.

In addition, DOE expects that the following modifications as described in section III.E would impose no additional test burden compared to the current ENERGY STAR test procedure: (7) Specifying that the vertical position in relation to the air velocity sensors be determined by the position of the lowest point on the ceiling fan blades, (8) specifying that ceiling fans should be tested in the configuration that minimizes the distance between the ceiling and the lowest part of the fan blades, (9) requiring that any heaters packaged with ceiling fans to be installed but switched off during testing, (10) revised allowable measurement tolerance for air velocity sensors, (11) revised allowable mounting tolerance for air velocity sensors, (12) revised testing temperature requirement, (13) requiring that all doors and vents must be closed during testing, (14) specifying that active (real) power must be measured simultaneously in all phases, (15) requiring measurement axes be perpendicular to test room walls, (16) require forced-air space conditioning equipment be turned off during air velocity measurements, but allow for conditioning equipment that does not supply air to the test room, such as radiant conditioning equipment, to be left on, and (17) requiring voltage be measured within 6 inches of connection supplied with fan.

Based on all of the differences between the final test procedure and the ENERGY STAR test procedure, and estimates from third-party testing facilities of the labor costs associated with these differences, DOE estimates that the final test procedure for HSSD ceiling fans will cost $1,325 on average per basic model, once the mechanism for the adjustment of the height of the air velocity sensors is constructed, and the insulation and non-forced-air conditioning system is added, if necessary. DOE did not find accurate data on the percentage of HSSD ceiling fans with standby capability, though DOE located some HSSD ceiling fans without standby capability in Web searches. To provide a conservative cost estimate, DOE made the assumption that all HSSD ceiling fans should be tested for standby power. Using the standby test quote of $200 per basic model, DOE estimates that the total test cost for the final test procedure and standby testing for single-headed HSSD ceiling fans will be $1,525.

For the four small business manufacturers of HSSD ceiling fans that DOE identified, the number of basic models produced per manufacturer varies significantly from one to approximately 30. Therefore, based on the test cost per ceiling fan basic model, the testing cost in the first year would range from approximately $1,525 to $45,750 for small manufacturers of HSSD ceiling fans. DOE expects this cost to be lower in subsequent years because only new or redesigned ceiling fan models would need to be tested.

In response to stakeholder comments, DOE considered alternatives to the test procedure established by this final rule. Specifically, DOE considered requiring additional sensors for HSSD fan testing. DOE found that additional sensors would cost an estimated $1,000 per sensor added, but found no evidence that additional sensors would improve how well the test procedure represents an HSSD fan's typical energy use. Consequently, DOE decided not to adopt provisions for additional sensors.

Large-Diameter Ceiling Fans

DOE estimated the cost to test a large-diameter ceiling fan based on discussions with testing facilities capable of performing the AMCA 230 test procedure as well as cost estimates based on the time and labor costs necessary to perform the test procedure on large-diameter ceiling fans. DOE estimates that the one-time cost for a lab to buy a load-cell, a fabricated load-cell frame, power meter, and one air velocity sensor is approximately $4,500. Based on test quotes, DOE estimates that the test procedure for large-diameter ceiling fans will cost manufacturers on average $7,500 per basic model for testing at up to five speeds. Using the standby test quote of $200 per basic model, DOE estimates that the total test cost for the final test procedure and standby testing for a large-diameter ceiling fans will be $7,700.

For the three small business manufacturers of large-diameter ceiling fans that DOE identified, the number of basic models produced per manufacturer varies from one to 30. Therefore, based on the test cost per ceiling fan basic model, the testing cost in the first year would range from approximately $7,700 to $231,000 for small manufacturers of large-diameter ceiling fans. DOE expects this cost to be lower in subsequent years because only new or redesigned ceiling fan models would need to be tested.

6. Description of Steps Taken To Minimize Impacts to Small Businesses

DOE considered a number of industry and governmental test procedures that measure the efficiency of ceiling fans to develop the test procedure in today's rulemaking. There appear to be two common approaches to testing ceiling fans: An approach based on using air velocity sensors to calculate airflow, such as the current DOE test procedure for ceiling fans, ENERGY STAR's test procedure, and CAN/CSA–C814–10, and an approach based on using a load cell to measure thrust, such as AMCA 230.

In principle, either approach could be used to measure the airflow efficiency of all ceiling fans, but maintaining consistency with industry practice would minimize test burden for all ceiling fan manufacturers. Though a load-cell based approach appears to be a potentially simpler method of estimating airflow efficiency, in industry, ceiling fans less than or equal to 7 feet in diameter, have historically been tested according to the air-velocity sensor based approach. Large-diameter ceiling fans, on the other hand, have historically been tested according to the load-cell based approach. It also appears to be cost-prohibitive to scale up the air-velocity sensor based approach to the large-diameter ceiling fans currently on the market given the number of sensors that would be required to cover ceiling fans 24 feet in diameter and the cost of constructing an appropriate rotating sensor arm. Therefore, DOE adopted the less burdensome approach in this final rule.

DOE also adopted a number of other measures in this final rule that will minimize impacts to small businesses: (1) Retaining the 15-minute warm-up time (see section III.C); (2) Eliminating the test cylinder from the test setup for HSSD ceiling fans (see section III.E.1); (3) Mounting HSSD ceiling fans to the real ceiling, rather than a false ceiling, for testing (see section III.E.6); (4) Relaxing the allowable measurement tolerance for the air velocity sensors used in testing HSSD ceiling fans (see section III.E.7); and (5) Relaxing the test room temperature tolerance (see section III.E.9).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of ceiling fans must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures on the date that compliance is required. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including ceiling fans. *See generally* 10 CFR part 429. The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE amends its test procedure for ceiling fans to more accurately measure the energy consumption of these products. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule amends an existing rule without affecting the amount, quality or distribution of energy usage, and, therefore, will not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this final rule and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

When reviewing existing regulations or promulgating new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Pub. L. 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of

$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *http://energy.gov/gc/office-general-counsel.* DOE examined this final rule according to UMRA and its statement of policy and determined these requirements do not apply because the rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights" 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action to amend the test procedure for measuring the energy efficiency of ceiling fans is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The final rule incorporates testing methods contained in the following commercial standards: ANSI/AMCA Standard 230–15, "Air Movement and Control Association Laboratory Methods of testing Air Circulating Fans for Rating and Certification" and IEC 62301:2011, "Household Electrical Appliances—Measurement of Standby Power." The Department has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.,* whether they were developed in a manner that fully provides for public participation, comment, and review.) DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

M. Description of Materials Incorporated by Reference

In this final rule, DOE is incorporating by reference specific sections of the following industry standards: (1) ANSI/AMCA Standard 230–15 ("AMCA 230–15"), "Air Movement and Control Association Laboratory Methods of Testing Air Circulating Fans for Rating and Certification," and (2) IEC 62301–U (Edition 2.0, 2011–01), "Household Electrical Appliances—Measurement of Standby Power."

AMCA 230–15 is an industry-standard test procedure for measuring the airflow efficiency of commercial and industrial ceiling fans. The test procedure in this final rule references Section 3 through Section 9 of AMCA 230–15 (except sections 5.1 and 9.5 and Test Figures 2 and 3), which specify the test apparatus, general instructions, procedure, and calculations for measuring airflow efficiency. AMCA 230–15 is available from the American National Standards Institute, 25 W. 43rd Street, 4th Floor, New York, NY 10036, 212–642–4900, or *www.ansi.org.*

IEC 62301–U is an industry-standard test procedure for measuring the standby power draw of electrical appliances (including ceiling fans). The test procedure in this final rule references Section 4.3.1 through Section 5.3.2 of IEC 62301–U (except sections 5.1 and 5.2), which specify the test apparatus, general instructions, procedure and calculations for measuring standby power consumption. Copies of IEC 62301–U are available from the International Electrotechnical

Commission, 3, rue de Varembé, P.O. Box 131, CH–1211 Geneva 20–Switzerland, or *https://webstore.iec.ch.*

N. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 429

Confidential business information, Energy conservation, Household appliances, Imports, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on July 6, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE amends parts 429 and 430 of chapter II, subchapter D of Title 10, Code of Federal Regulations, as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Section 429.32 is amended by revising paragraph (a) to read as follows:

§ 429.32 Ceiling fans.

(a) *Determination of represented value.* Manufacturers must determine the represented value, which includes the certified rating, for each basic model of ceiling fan by testing, in conjunction with the following sampling provisions:

(1) The requirements of § 429.11 are applicable to ceiling fans; and

(2) For each basic model of ceiling fan selected for testing, a sample of sufficient size must be randomly selected and tested to ensure that—

(i) Any represented value of the efficiency or airflow is less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

And $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the i^{th} sample; or

(B) The lower 90 percent confidence limit (LCL) of the true mean divided by 0.9, where:

$$LCL = \overline{x} - t_{0.90}(\frac{s}{\sqrt{n}})$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.90}$ is the t statistic for a 90% one-tailed confidence interval with n − 1 degrees of freedom (from appendix A to subpart B); and

(ii) Any represented value of the wattage is greater than or equal to the higher of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

And $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the i^{th} sample; or

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.1, where:

$$UCL = \overline{x} + t_{0.95}(\frac{s}{\sqrt{n}})$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n − 1 degrees of freedom (from appendix A to this subpart).

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PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 3. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 4. Section 430.2 is amended by revising the definition for "ceiling fan" to read as follows:

§ 430.2 Definitions.

* * * * *

Ceiling fan means a nonportable device that is suspended from a ceiling for circulating air via the rotation of fan blades. For all other ceiling fan-related definitions, see appendix U to this subpart.

* * * * *

■ 5. Section 430.3 is amended by adding paragraphs (b)(3) and (p)(6) to read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(b) * * *

(3) ANSI/AMCA Standard 230–15 ("AMCA 230–15"), "Laboratory Methods of Testing Air Circulating Fans for Rating and Certification," ANSI approved October 16, 2015, IBR approved for appendix U to this subpart, as follows:

(i) Section 3—Units of Measurement;

(ii) Section 4—Symbols and Subscripts; (including Table 1—Symbols and Subscripts);

(iii) Section 5—Definitions (except 5.1);

(iv) Section 6—Instruments and Section Methods of Measurement;

(v) Section 7—Equipment and Setups (except the last 2 bulleted items in 7.1—Allowable test setups);

(vi) Section 8—Observations and Conduct of Test;

(vii) Section 9—Calculations (except 9.5); and

(viii) Test Figure 1—Vertical Airflow Setup with Load Cell (Ceiling Fans).

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(p) * * *

(6) IEC 62301 ("IEC 62301–U"), Household electrical appliances—Measurement of standby power, (Edition 2.0, 2011–01), IBR approved for appendix U to this subpart, as follows:

(i) Section 4.3—General conditions for measurements: Power supply: Section 4.3.1—Supply voltage and frequency (first paragraph only),

(ii) Section 4.3—General conditions for measurements: Power supply: Section 4.3.2—Supply voltage waveform;

(iii) Section 4.4—General conditions for measurements: Power measuring instruments;

(iv) Section 5.3—Measurements: Procedure: Section 5.3.1—General (except the last bulleted item), and

(v) Section 5.3—Measurements: Procedure: Section 5.3.2—Sampling method (first two paragraphs and Note 1).

* * * * *

■ 6. Section 430.23 is amended by revising paragraph (w) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(w) *Ceiling fans.* Measure the efficiency of a ceiling fan, expressed in cubic feet per minute per watt (CFM/W), in accordance with appendix U to this subpart.

* * * * *

■ 7. Appendix U to subpart B of part 430 is added to read as follows:

Appendix U To Subpart B OF Part 430—Uniform Test Method for Measuring the Energy Consumption of Ceiling Fans

Prior to January 23, 2017, manufacturers must make any representations with respect to the energy use or efficiency of ceiling fans as specified in Section 2 of this appendix (other than hugger ceiling fans, multi-mount ceiling fans in the hugger configuration, and large-diameter ceiling fans) in accordance with the results of testing pursuant either to this appendix, or to the applicable test requirements set forth in 10 CFR parts 429 and 430, as they appeared in the 10 CFR parts 200 to 499 edition revised as of January 1, 2016. On or after January 23, 2017, manufacturers of ceiling fans, as specified in Section 2 of this appendix, must make any representations with respect to energy use or efficiency in accordance with the results of testing pursuant to this appendix.

1. Definitions:

1.1. *20% speed* means the ceiling fan speed at which the blade RPM are measured to be 20% of the blade RPM measured at high speed.

1.2. *40% speed* means the ceiling fan speed at which the blade RPM are measured to be 40% of the blade RPM measured at high speed.

1.3. *60% speed* means the ceiling fan speed at which the blade RPM are measured to be 60% of the blade RPM measured at high speed.

1.4. *80% speed* means the ceiling fan speed at which the blade RPM are measured to be 80% of the blade RPM measured at high speed.

1.5. *Airflow* means the rate of air movement at a specific fan-speed setting expressed in cubic feet per minute (CFM).

1.6. *Belt-driven ceiling fan* means a ceiling fan with a series of one or more fan heads, each driven by a belt connected to one or more motors that are located outside of the fan head.

1.7. *Blade span* means the diameter of the largest circle swept by any part of the fan blade assembly, including any blade attachments.

1.8. *Ceiling fan efficiency* means the ratio of the total airflow to the total power consumption, in units of cubic feet per minute per watt (CFM/W).

1.9. *Centrifugal ceiling fan* means a ceiling fan for which the primary airflow direction is in the same plane as the rotation of the fan blades.

1.10. *High speed* means the highest available ceiling fan speed, *i.e.*, the fan speed corresponding to the maximum blade revolutions per minute (RPM).

1.11. *High-speed small-diameter* ceiling fan means a small-diameter ceiling fan that is not a very-small-diameter ceiling fan, highly-decorative ceiling fan or belt-driven ceiling fan and that has a blade thickness of less than 3.2 mm at the edge or a maximum tip speed greater than the applicable limit specified in the table in this definition.

HIGH-SPEED SMALL-DIAMETER CEILING FAN BLADE AND TIP SPEED CRITERIA

Airflow direction	Thickness (t) of edges of blades		Tip speed threshold	
	Mm	inch	m/s	feet per minute
Downward-only	4.8 > t ≥ 3.2	3/16 > t ≥ 1/8	16.3	3,200
Downward-only	t ≥ 4.8	t ≥ 3/16	20.3	4,000
Reversible	4.8 > t ≥ 3.2	3/16 > t ≥ 1/8	12.2	2,400
Reversible	t ≥ 4.8	t ≥ 3/16	16.3	3,200

1.12. *Highly-decorative ceiling fan* means a ceiling with a maximum rotational speed of 90 RPM and less than 1,840 CFM airflow at high speed, as determined by sections 3 and 4 of this appendix.

1.13. *Hugger ceiling fan* means a low-speed small-diameter ceiling fan that is not a very-small-diameter ceiling fan, highly-decorative ceiling fan or belt-driven ceiling fan; for which the lowest point on the fan blades is less than or equal to 10 inches from the ceiling.

1.14. *Large-diameter ceiling fan* means a ceiling fan that is greater than seven feet in diameter.

1.15. *Low speed* means the lowest available ceiling fan speed, *i.e.*, the fan speed corresponding to the minimum, non-zero, blade RPM.

1.16. *Low-speed small-diameter ceiling fan* means a small-diameter ceiling fan that has a blade thickness greater than or equal to 3.2 mm at the edge and a maximum tip speed less than or equal to the applicable limit specified in the table in this definition.

LOW-SPEED SMALL-DIAMETER CEILING FAN BLADE AND TIP SPEED CRITERIA

Airflow direction	Thickness (t) of edges of blades		Tip speed threshold	
	Mm	inch	m/s	feet per minute
Reversible	4.8 > t ≥ 3.2	3/16 > t ≥ 1/8	12.2	2,400
Reversible	t ≥ 4.8	t ≥ 3/16	16.3	3,200

1.17. *Multi-head ceiling fan* means a ceiling fan with more than one fan head, *i.e.*, more than one set of rotating fan blades.

1.18. *Multi-mount ceiling fan* means a low-speed small-diameter ceiling fan that can be mounted in the configurations associated with both the standard and hugger ceiling fans.

1.19. *Oscillating ceiling fan* means a ceiling fan containing one or more fan heads for which the axis of rotation of the fan blades cannot remain in a fixed position relative to the ceiling. Such fans have no inherent means by which to disable the oscillating function separate from the fan blade rotation.

1.20. *Small-diameter ceiling fan* means a ceiling fan that is less than or equal to seven feet in diameter.

1.21. *Standard ceiling fan* means a low-speed small-diameter ceiling fan that is not a very-small-diameter ceiling fan, highly-decorative ceiling fan or belt-driven ceiling fan; for which the lowest point on fan blades is greater than 10 inches from the ceiling.

1.22. *Total airflow* means the sum of the product of airflow and hours of operation at all tested speeds. For multi-head fans, this includes the airflow from all fan heads.

1.23. *Very-small-diameter ceiling fan* means a small-diameter ceiling fan that is not a highly-decorative ceiling fan or belt-driven ceiling fan; and has one or more fan heads, each of which has a blade span of 18 inches or less.

2. Scope:

The provisions in this appendix apply to ceiling fans except:

(1) Ceiling fans where the plane of rotation of a ceiling fan's blades is not less than or

equal to 45 degrees from horizontal, or cannot be adjusted based on the manufacturer's specifications to be less than or equal to 45 degrees from horizontal;

(2) Centrifugal ceiling fans;

(3) Belt-driven ceiling fans; and

(4) Oscillating ceiling fans.

3. General Instructions, Test Apparatus, and Test Measurement:

The test apparatus and test measurement used to determine energy performance depend on the ceiling fan's blade span. For each tested ceiling fan, measure the lateral distance from the center of the axis of rotation of the fan blades to the furthest fan blade edge from the center of the axis of rotation, and multiply this distance by two. The blade span for a basic model of ceiling fan is then calculated as the arithmetic mean of this distance across each ceiling fan in the sample, rounded to the nearest inch.

3.1. General instructions.

3.1.1. Record measurements at the resolution of the test instrumentation. Round off calculations to the number of significant digits present at the resolution of the test instrumentation, except for blade span, which is rounded to the nearest inch. Round the final ceiling fan efficiency value to the nearest whole number as follows:

3.1.1.1. A fractional number at or above the midpoint between the two consecutive whole numbers shall be rounded up to the higher of the two whole numbers; or

3.1.1.2. A fractional number below the midpoint between the two consecutive whole numbers shall be rounded down to the lower of the two whole numbers.

3.1.2. For multi-head ceiling fans, the effective blade span is the blade span (as specified in section 3) of an individual fan head, if all fan heads are the same size. If the fan heads are of varying sizes, the effective blade span is the blade span (as specified in section 3) of the largest fan head.

3.2. Test apparatus for low-speed small-diameter and high-speed small-diameter ceiling fans: All instruments are to have accuracies within ±1% of reading, except for the air velocity sensors, which must have accuracies within ±5% of reading or 2 feet per minute (fpm), whichever is greater. Equipment is to be calibrated at least once a year to compensate for variation over time.

3.2.1. *Air Delivery Room Requirements*

(1) The air delivery room dimensions are to be 20 ± 0.75 feet x 20 ± 0.75 feet with an 11 ± 0.75 foot-high ceiling. The control room shall be constructed external to the air delivery room.

(2) The ceiling shall be constructed of sheet rock or stainless plate. The walls must be of adequate thickness to maintain the specified temperature and humidity during the test. The paint used on the walls, as well as the paint used on the ceiling material, must be of a type that minimizes absorption of humidity and that keeps the temperature of the room constant during the test (*e.g.*, oil-based paint).

(3) The room must not have any ventilation other than an air conditioning and return system used to control the temperature and humidity of the room. The construction of the room must ensure consistent air circulation patterns within the room. Vents must have electronically-operated damper doors controllable from a switch outside of the testing room.

3.2.2. *Equipment Set-Up*

(1) Make sure the transformer power is off. Hang the ceiling fan to be tested directly from the ceiling, according to the manufacturer's installation instructions. Hang all non-multi-mount ceiling fans in the fan configuration that minimizes the distance between the ceiling and the lowest point of the fan blades. Hang and test multi-mount fans in two configurations: The configuration associated with the definitions of a standard fan that minimizes the distance between the ceiling and the lowest point of the fan blades and the configuration associated with the definition of a hugger fan that minimizes the distance between the ceiling and the lowest point of the fan blades.

(2) Connect wires as directed by manufacturer's wiring instructions. *Note:* Assemble fan prior to the test; lab personnel must follow the instructions provided with the fan by the fan manufacturer. Balance the fan blade assembly in accordance with the manufacturer's instructions to avoid excessive vibration of the motor assembly (at any speed) during operation.

(3) With the ceiling fan installed, adjust the height of the air velocity sensors to ensure the vertical distance between the lowest point on the ceiling fan blades and the air velocity sensors is 43 inches.

(4) Either a rotating sensor arm or four fixed sensor arms can be used to take airflow measurements along four axes, labeled A–D. Axes A, B, C, and D are at 0, 90, 180, and 270 degree positions. Axes A–D must be perpendicular to the four walls of the room. See Figure 1 of this appendix.

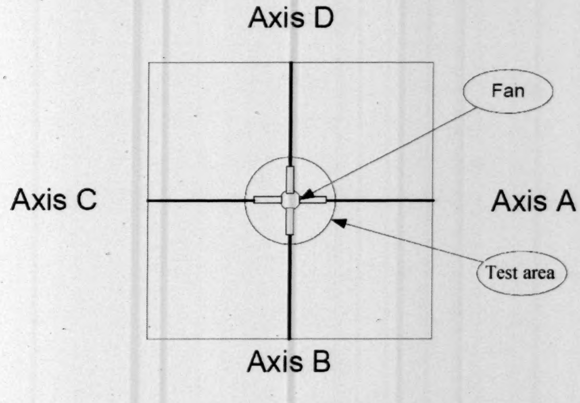

Figure 1 to Appendix U to Subpart B of Part 430: Testing Room and Sensor Arm Axes

(5) Minimize the amount of exposed wiring. Store all sensor lead wires under the floor, if possible.

(6) Place the sensors at intervals of 4 ± 0.0625 inches along a sensor arm, starting with the first sensor at the point where the four axes intersect. Do not touch the actual sensor prior to testing. Use enough sensors to record air delivery within a circle 8 inches larger in diameter than the blade span of the ceiling fan being tested. The experimental set-up is shown in Figure 2 of this appendix.

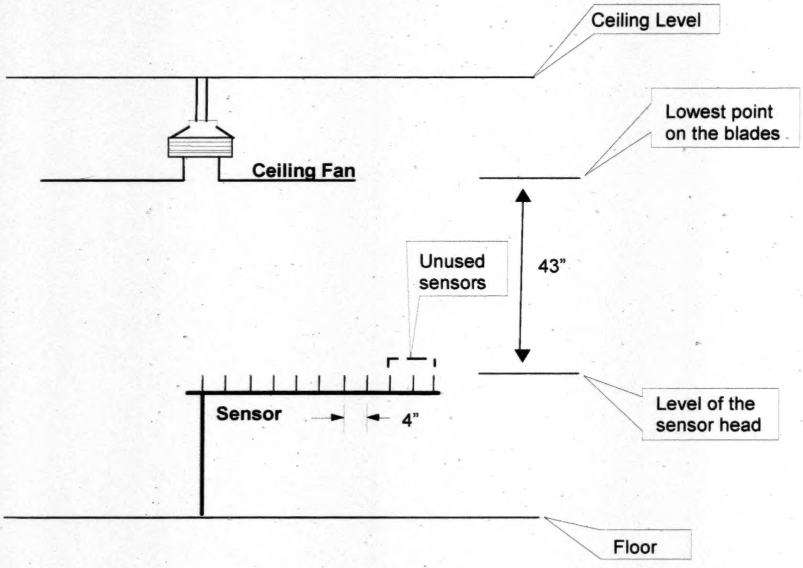

Figure 2 to Appendix U to Subpart B of Part 430: Air Delivery Room Set-Up for Small-Diameter Ceiling Fans

(7) Table 1 of this appendix shows the appropriate number of sensors needed per each of four axes (including the first sensor at the intersection of the axes) for common fan sizes.

TABLE 1 TO APPENDIX U TO SUBPART B OF PART 430: SENSOR SELECTION REQUIREMENTS

Fan blade span * (inches)	Number of sensors
36	6
42	7
44	7
48	7
52	8
54	8
56	8
60	9
72	10
84	12

* The fan sizes listed are illustrative and do not restrict which ceiling fan sizes can be tested.

(8) Install an RPM (revolutions per minute) meter, or tachometer, to measure RPM of the ceiling fan blades.

(9) Use an RMS sensor capable of measuring power with an accuracy of ±1% to measure ceiling fan power consumption. If the ceiling fan operates on multi-phase power input, measure the active (real) power in all phases simultaneously. Measure test voltage within 6" of the connection supplied with the ceiling fan.

(10) Complete any conditioning instructions provided in the ceiling fan's instruction or installation manual must be completed prior to conducting testing.

3.2.3. *Multi-Head Ceiling Fan Test Set-Up*

Hang a multi-headed ceiling fan from the ceiling such that one of the ceiling fan heads is centered directly over sensor 1 (*i.e.*, at the intersection of axes A, B, C, and D). The distance between the lowest point any of the fan blades of the centered fan head can reach and the air velocity sensors is to be such that it is the same as for all other small-diameter ceiling fans (see Figure 2 of this appendix). If the multi-head ceiling fan has an oscillating function (*i.e.*, the fan heads change their axis of rotation relative to the ceiling) that can be switched off, switch it off prior to taking airflow measurements. If any multi-head fan does not come with the blades preinstalled, install fan blades only on the fan head that will be directly centered over the intersection of the sensor axes. (Even if the fan heads in a multi-head ceiling fan would typically oscillate when the blades are installed on all fan heads, the ceiling fan is subject to this test procedure if the centered fan head does not oscillate when it is the only fan head with the blades installed.) If the fan blades are preinstalled on all fan heads, measure airflow in accordance with section 3.3 except only turn on the centered fan head. Measure the power consumption measurements are to be made separately, with the fan blades installed on all fan heads and with any oscillating function, if present, switched on.

3.2.4. Test Set-Up for Ceiling Fans with Airflow Not Directly Downward

For ceiling fans where the airflow is not directly downward, adjust the ceiling fan head such that the airflow is as vertical as possible prior to testing. For ceiling fans where a fully vertical orientation of airflow cannot be achieved, orient the ceiling fan (or fan head, if the ceiling fan is a multi-head fan) such that any remaining tilt is aligned along one of the four sensor axes. Instead of measuring the air velocity for only those sensors directly beneath the ceiling fan, the air velocity is to be measured at all sensors along that axis, as well as the axis oriented 180 degrees with respect to that axis. For example, if the tilt is oriented along axis A, air velocity measurements are to be taken for all sensors along the A–C axis. No measurements would need to be taken along the B–D axis in this case. All other aspects of test set-up remain unchanged from sections 3 through 3.2.2.

3.3. Active mode test measurement for low-speed small-diameter and high-speed small-diameter ceiling fans.

3.3.1. *Test conditions to be followed when testing:*

(1) Maintain the room temperature at 70 degrees ± 5 degrees Fahrenheit and the room humidity at 50% ± 5% relative humidity during the entire test process.

(2) If present, the ceiling fan light fixture is to be installed but turned off during testing.

(3) If present, any heater is to be installed but turned off during testing.

(4) If present, turn off any oscillating function causing the axis of rotation of the fan head(s) to change relative to the ceiling during operation prior to taking airflow measurements. Turn on any oscillating function prior to taking power measurements.

(5) The supply voltage shall be:

(i) 120 V if the ceiling fan's minimum rated voltage is 120 V or the lowest rated voltage range contains 120 V,

(ii) 240 V if the ceiling fan's minimum rated voltage is 240 V or the lowest rated voltage range contains 240 V, or

(iii) The ceiling fan's minimum rated voltage (if a voltage range is not given) or the mean of the lowest rated voltage range, in all other cases. The test voltage shall not vary by more than ±1% during the tests.

(6) Test ceiling fans rated for operation with only a single- or multi-phase power supply with single- or multi-phase electricity, respectively. Measure active (real) power in all phases continuously when testing. Test ceiling fans capable of operating with single- and multi-phase electricity with single-phase electricity. DOE will allow manufacturers of ceiling fans capable of operating with single- and multi-phase electricity to test such fans with multi-phase power and make representations of efficiency associated with both single and multi-phase electricity if a manufacturer desires to do so, but the test results in the multi-phase configuration will not be valid to assess compliance with any amended energy conservation standard.

(7) Conduct the test with the fan connected to a supply circuit at the rated frequency.

(8) Measure power input at a point that includes all power-consuming components of the ceiling fan (but without any attached light kit or heater energized).

3.3.2. *Airflow and Power Consumption Testing Procedure:*

Measure the airflow (CFM) and power consumption (W) for HSSD ceiling fans until stable measurements are achieved, measuring at high speed only. Measure the airflow and power consumption for LSSD ceiling fans until stable measurements are achieved, measuring first at low speed and then at high speed. Airflow and power consumption measurements are considered stable if:

(1) The average air velocity for all axes for each sensor varies by less than 5% compared to the average air velocity measured for that same sensor in a successive set of air velocity measurements, and

(2) Average power consumption varies by less than 1% in a successive set of power consumption measurements. These stability criteria are applied differently to ceiling fans with airflow not directly downward. See section 4.1.2 of this appendix.

Step 1: Set the first sensor arm (if using four fixed arms) or single sensor arm (if using a single rotating arm) to the 0 degree Position (Axis A). If necessary, use a marking as reference. If using a single rotating arm, adjust the sensor arm alignment until it is at the 0 degree position by remotely controlling the antenna rotator.

Step 2: Set software up to read and record air velocity, expressed in feet per minute (FPM) in 1 second intervals. (Temperature does not need to be recorded in 1 second intervals.) Record current barometric pressure.

Step 3: Allow test fan to run 15 minutes at rated voltage and at high speed if the ceiling fan is an HSSD ceiling fan. If the ceiling fan is an LSSD ceiling fan, allow the test fan to run 15 minutes at the rated voltage and at low speed. Turn off all forced-air environmental conditioning equipment entering the chamber (*e.g.*, air conditioning), close all doors and vents, and wait an additional 3 minutes prior to starting test session.

Step 4: Begin recording readings. Take 100 airflow velocity readings (100 seconds run-time) and save these data. If using a rotating sensor arm, this is axis A. For all fans except multi-head fans and fans capable of oscillating, measure power during the interval that air velocity measurements are taken. Record the average value of the power measurement in watts (W).

Step 5: Similarly, take 100 air velocity readings (100 seconds run-time) for Axes B, C, and D; save these data as well. Measure power as described in Step 4. If using four fixed sensor arms, take the readings for all sensor arms simultaneously.

Step 6: Repeat Steps 4 and 5 until stable measurements are achieved.

Step 7: Repeat steps 1 through 6 above on high fan speed for LSSD ceiling fans. Note: Ensure that temperature and humidity readings are maintained within the required tolerances for the duration of the test (all tested speeds). Forced-air environmental conditioning equipment may be used and doors and vents may be opened between test sessions to maintain environmental conditions.

Step 8: If testing a multi-mount ceiling fan, repeat steps 1 through 7 with the ceiling fan in the ceiling fan configuration (associated with either hugger or standard ceiling fans) not already tested.

If a multi-head ceiling fan includes more than one category of ceiling fan head, then test at least one of each unique category. A fan head with different construction that could affect air movement or power consumption, such as housing, blade pitch, or motor, would constitute a different category of fan head.

Step 9: For multi-head ceiling fans, measure active (real) power consumption in all phases simultaneously at each speed continuously for 100 seconds with all fan heads turned on, and record the average value at each speed in watts (W).

For ceiling fans with an oscillating function, measure active (real) power consumption in all phases simultaneously at each speed continuously for 100 seconds with the oscillating function turned on. Record the average value of the power measurement in watts (W).

For both multi-head ceiling fans and fans with an oscillating function, repeat power consumption measurement until stable power measurements are achieved.

3.4. Test apparatus for large-diameter ceiling fans:

The test apparatus and instructions for testing large-diameter ceiling fans must conform to the requirements specified in sections 3 through 7 of AMCA 230–15 (incorporated by reference, see § 430.3), with the following modifications:

3.4.1. The test procedure is applicable to large-diameter ceiling fans up to 24 feet in diameter.

3.4.2. A "ceiling fan" is defined as in 10 CFR 430.2.

3.4.3. The supply voltage shall be (1) 120 V if the ceiling fan's minimum rated voltage is 120 V or the lowest rated voltage range contains 120 V, (2) 240 V if the ceiling fan's minimum rated voltage is 240 V or the lowest rated voltage range contains 240 V, or (3) the ceiling fan's minimum rated voltage (if a voltage range is not given) or the mean of the lowest rated voltage range, in all other cases.

3.4.4. Test ceiling fans rated for operation with only a single- or multi-phase power supply with single- or multi-phase electricity, respectively. Test ceiling fans capable of operating with single- and multi-phase electricity with multi-phase electricity. DOE will allow manufacturers of ceiling fans capable of operating with single- and multi-phase electricity to test such fans with single-phase power and make representations of efficiency associated with both single and multi-phase electricity if a manufacturer desires to do so, but the test results in the single-phase configuration will not be valid to assess compliance with any amended energy conservation standard.

3.5. Active mode test measurement for large-diameter ceiling fans:

(1) Calculate the airflow (CFM) and measure the active (real) power consumption (W) in all phases simultaneously for ceiling fans at the speeds specified in Table 2.

TABLE 2 TO APPENDIX U TO SUBPART B OF PART 430—SPEEDS TO BE TESTED FOR LARGE-DIAMETER CEILING FANS

Available speeds	Number of speeds to test	Which speeds to test	Efficiency metric weighting for each speed ** (%)
1	All	All	100
2	All	All	50
3	All	All	33
4	All	All	25
5	All	All	20
6+ (discrete)	5	5 fastest speeds	20

TABLE 2 TO APPENDIX U TO SUBPART B OF PART 430—SPEEDS TO BE TESTED FOR LARGE-DIAMETER CEILING FANS—Continued

Available speeds	Number of speeds to test	Which speeds to test	Efficiency metric weighting for each speed** (%)
Infinite (continuous)*	5	High speed 80% speed 60% speed 40% speed 20% speed	20

*This corresponds to a ceiling fan, such as a ceiling fan with a variable-frequency drive (VFD) that operates over a continuous (rather than discrete) range of speeds.

**All tested speeds are to be weighted equally. Therefore, the weighting shown here for a ceiling fan with three available speeds is approximate.

(2) When testing at speeds other than high speed (*i.e.*, X% speed where X is 80, 60, 40, or 20) for ceiling fans that can operate over an infinite number of speeds (*e.g.*, ceiling fans with VFDs), ensure the average measured RPM is within the greater of 1% of the average RPM at high speed or 1 RPM. For example, if the average measured RPM at high speed is 50 RPM, for testing at 80% speed the average measured RPM should be between 39 RPM and 41 RPM. If the average measured RPM falls outside of this tolerance, adjust the ceiling fan speed and repeat the test. Calculate the airflow and measure the active (real) power consumption in all phases simultaneously in accordance with the test requirements specified in sections 8 and 9, AMCA 230–15 (incorporated by reference, see § 430.3), with the following modifications:

3.5.1. Measure active (real) power consumption in all phases simultaneously at a point that includes all power-consuming components of the ceiling fan (but without any attached light kit or heater energized).

3.5.2. Measure active (real) power consumption in all phases simultaneously continuously at the rated voltage that represents normal operation over the time period for which the load differential test is conducted.

3.6. Test measurement for standby power consumption.

(1) Measure standby power consumption if the ceiling fan offers one or more of the following user-oriented or protective functions:

☐☐o The ability to facilitate the activation or deactivation of other functions (including active mode) by remote switch (including remote control), internal sensor, or timer.

☐ Continuous functions, including information or status displays (including clocks), or sensor-based functions.

(2) Measure standby power consumption after completion of active mode testing and after the active mode functionality has been switched off (*i.e.*, the rotation of the ceiling fan blades is no longer energized). The ceiling fan must remain connected to the main power supply and be in the same configuration as in active mode (*i.e.*, any ceiling fan light fixture should still be attached). Measure standby power consumption according to sections 4 and 5.3.1 through 5.3.2 of IEC 62301–U (incorporated by reference, see § 430.3) with the following modifications:

3.6.1. Allow 3 minutes between switching off active mode functionality and beginning the standby power test. (No additional time before measurement is required.)

3.6.2. Simultaneously in all phases, measure active (real) power consumption continuously for 100 seconds, and record the average value of the standby power measurement in watts (W).

3.6.3. Determine power consumption according to section 5.3.2 of IEC 62301–U, or by using the following average reading method. Note that a shorter measurement period may be possible using the sample method in section 5.3.2 of IEC 62301–U.

(1) Connect the product to the power supply and power measuring instrument.

(2) Select the mode to be measured (which may require a sequence of operations and could require waiting for the product to automatically enter the desired mode) and then monitor the power.

(3) Calculate the average power using either the average power method or the accumulated energy method. For the average power method, where the power measuring instrument can record true average power over an operator selected period, the average power is taken directly from the power measuring instrument. For the accumulated energy method, determine the average power by dividing the measured energy by the time for the monitoring period. Use units of watt-hours and hours for both methods to determine average power in watts.

4. Calculation of Ceiling Fan Efficiency From the Test Results:

(1) The efficacy of a ceiling fan is the *ceiling fan efficiency* (as defined in section 1 of this appendix). Calculate two ceiling fan efficiencies for multi-mount ceiling fans: One efficiency corresponds to the ceiling fan mounted in the configuration associated with the definition of a hugger ceiling fan, and the other efficiency corresponds to the ceiling fan mounted in the configuration associated with the definition of a standard ceiling fan.

(2) Calculate fan efficiency using the average of both sets of airflow and power measurements from the successive sets of measurements that meet the stability criteria.

(3) To calculate the measured airflow for HSSD and LSSD ceiling fans, multiply the average air velocity measurement at each sensor from section 3.3 of this appendix (for high speed for HSSD ceiling fans, and for high and low speeds for LSSD ceiling fans) with the sensor's effective area (explained below), and then sum the products to obtain the overall measured airflow at the tested speed. Using the airflow and the power consumption measurements from sections 3.3 and 3.5 of this appendix (for all tested settings for large-diameter ceiling fans) calculate the efficiency for any ceiling fan as follows:

$$\textit{Ceiling Fan Efficiency}\ (CFM/W) = \frac{\sum_i (CFM_i \times OH_i)}{W_{Sb} \times OH_{Sb} + \sum_i (W_i \times OH_i)} \qquad \textbf{Eq. 1}$$

Where:

CFM_i = airflow at speed *i*,

OH_i = operating hours at speed *i*,

W_i = power consumption at speed *i*,

OH_{Sb} = operating hours in standby mode, and

W_{Sb} = power consumption in standby mode.

(4) Table 3 of this appendix specifies the daily hours of operation to be used in calculating ceiling fan efficiency:

TABLE 3 TO APPENDIX U TO SUBPART B OF PART 430—DAILY OPERATING HOURS FOR CALCULATING CEILING FAN EFFICIENCY

	No standby	With standby
Daily Operating Hours for LSSD Ceiling Fans		
High Speed	3.4	3.4
Low Speed	3.0	3.0
Standby Mode	0.0	17.6
Off Mode	17.6	0.0
Daily Operating Hours for HSSD Ceiling Fans		
High Speed	12.0	12.0
Standby Mode	0.0	12.0
Off Mode	12.0	0.0
Daily Operating Hours for Large-Diameter Ceiling Fans		
Active Mode *	12.0	12.0
Standby Mode	0.0	12.0
Off Mode	12.0	0.0

* The active mode hours must be apportioned equally across the number of active mode speeds tested (*e.g.*, if four speeds are tested, 25% of the active mode hours are apportioned to each speed).

(5) Calculate the effective area corresponding to each sensor used in the test method for small-diameter ceiling fans with the following equations:

(6) For sensor 1, the sensor located directly underneath the center of the ceiling fan, the effective width of the circle is 2 inches, and the effective area is:

$$Effective\ Area\ (sq.ft.) = \pi\left(\frac{2}{12}\right)^2 = 0.0873 \qquad \textbf{Eq. 2}$$

(7) For the sensors between sensor 1 and the last sensor used in the measurement, the effective area has a width of 4 inches. If a sensor is a distance *d,* in inches, from sensor 1, then the effective area is:

$$Effective\ Area\ (sq.ft.) = \pi\left(\frac{d+2}{12}\right)^2 - \pi\left(\frac{d-2}{12}\right)^2 \qquad \textbf{Eq. 3}$$

(8) For the last sensor, the width of the effective area depends on the horizontal displacement between the last sensor and the point on the ceiling fan blades furthest radially from the center of the fan. The total area included in an airflow calculation is the area of a circle 8 inches larger in diameter than the ceiling fan blade span (as specified in section 3 of this appendix).

(9) Therefore, for example, for a 42-inch ceiling fan, the last sensor is 3 inches beyond the end of the ceiling fan blades. Because only the area within 4 inches of the end of the ceiling fan blades is included in the airflow calculation, the effective width of the circle corresponding to the last sensor would be 3 inches. The calculation for the effective area corresponding to the last sensor would then be:

$$Effective\ Area\ (sq.ft.) = \pi\left(\frac{d+1}{12}\right)^2 - \pi\left(\frac{d-2}{12}\right)^2 = \pi\left(\frac{24+1}{12}\right)^2 - \pi\left(\frac{24-2}{12}\right)^2 = 3.076 \qquad \textbf{Eq. 4}$$

(10) For a 46-inch ceiling fan, the effective area of the last sensor would have a width of 5 inches, and the effective area would be:

$$Effective\ Area\ (sq.ft.) = \pi\left(\frac{d+3}{12}\right)^2 - \pi\left(\frac{d-2}{12}\right)^2 = \pi\left(\frac{24+3}{12}\right)^2 - \pi\left(\frac{24-2}{12}\right)^2 = 5.345 \qquad \textbf{Eq. 5}$$

4.1.1. *Ceiling fan efficiency calculations for multi-head ceiling fans*

To determine the airflow at a given speed for a multi-head ceiling fan, sum the measured airflow for each fan head included in the ceiling fan (a single airflow measurement can be applied to identical fan heads, but at least one of each unique fan head must be tested). The power consumption is the measured power consumption with all fan heads on. Using the airflow and power consumption measurements from section 3.3 of this appendix, calculate ceiling fan efficiency for a multi-head ceiling fan as follows:

$$Ceiling\ Fan\ Efficiency\ (CFM/W) = \frac{\sum_i (CFM_i \times OH_i)}{W_{Sb} \times OH_{Sb} + \sum_i (W_i \times OH_i)} \qquad \textbf{Eq. 6}$$

Where:

CFM_i = sum of airflow at a given speed for each head,
OH_i = operating hours at a given speed,
W_i = total power consumption at a given speed,
OH_{Sb} = operating hours in standby mode, and
W_{Sb} = power consumption in standby mode.

4.1.2. *Ceiling fan efficiency calculations for ceiling fans with airflow not directly downward*

Using a set of sensors that cover the same diameter as if the airflow were directly downward, the airflow at each speed should be calculated based on the continuous set of sensors with the largest air velocity measurements. This continuous set of sensors must be along the axis that the ceiling fan tilt is directed in (and along the axis that is 180 degrees from the first axis). For example, a 42-inch fan tilted toward axis A may create the pattern of air velocity shown in Figure 3 of this appendix. As shown in Table 1 of this appendix, a 42-inch fan would normally require 7 active sensors. However because the fan is not directed downward, all sensors must record data. In this case, because the set of sensors corresponding to maximum air velocity are centered 3 sensor positions away from the sensor 1 along the A axis, substitute the air velocity at A axis sensor 4 for the average air velocity at sensor 1. Take the average of the air velocity at A axis sensors 3 and 5 as a substitute for the average air velocity at sensor 2, take the average of the air velocity at A axis sensors 2 and 6 as a substitute for the average air velocity at sensor 3, etc. Lastly, take the average of the air velocities at A axis sensor 10 and C axis sensor 4 as a substitute for the average air velocity at sensor 7. Stability criteria apply after these substitutions. For example, air velocity stability at sensor 7 are determined based on the average of average air velocity at A axis sensor 10 and C axis sensor 4 in successive measurements. Any air velocity measurements made along the B–D axis are not included in the calculation of average air velocity.

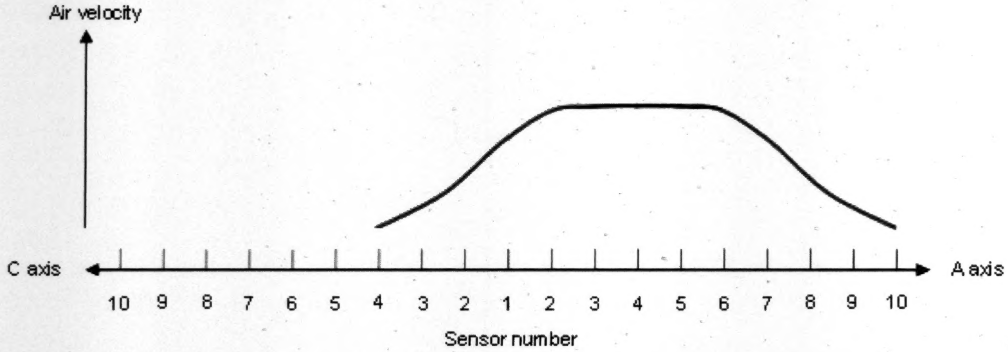

Figure 3 to Appendix U to Subpart B of Part 430: Example Air Velocity Pattern for Airflow Not Directly Downward

[FR Doc. 2016–17139 Filed 7–22–16; 8:45 am]

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Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20
Migratory Bird Hunting; Seasons and Bag and Possession Limits for Certain Migratory Game Birds; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–HQ–MB–2015–0034; FF09M21200–167–FXMB1231099BPP0]

RIN 1018–BA70

Migratory Bird Hunting; Seasons and Bag and Possession Limits for Certain Migratory Game Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits for migratory game birds. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule permits the taking of designated species during the 2016–17 season.

DATES: This rule takes effect on July 25, 2016.

ADDRESSES: You may inspect comments received on the migratory bird hunting regulations during normal business hours at the Service's office at 5275 Leesburg Pike, Falls Church, Virginia. You may obtain copies of referenced reports from the street address above, or from the Division of Migratory Bird Management's Web site at *http://www.fws.gov/migratorybirds/*, or at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2015–0034.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2016

On August 6, 2015, we published in the **Federal Register** (80 FR 47388) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and addressed the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. Major steps in the 2016–17 regulatory cycle relating to open public meetings and **Federal Register** notifications were also identified in the August 6, 2015, proposed rule.

On October 20–21, 2015, we held open meetings with the Flyway Council Consultants, at which the participants reviewed information on the current status of migratory game birds and developed recommendations for the 2016–17 regulations for these species.

On December 11, 2015, we published in the **Federal Register** (80 FR 77088) the proposed frameworks for the 2016–17 season migratory bird hunting regulations. On March 28, 2016, we published in the **Federal Register** (81 FR 17302) final season frameworks for migratory game bird hunting regulations, from which State wildlife conservation agency officials selected season hunting dates, hours, areas, and limits for 2016–17 seasons.

The final rule described here is the final in the series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations for 2016–17 and deals specifically with amending subpart K of 50 CFR part 20. It sets hunting seasons, hours, areas, and limits for migratory game bird species. This final rule is the culmination of the rulemaking process for the migratory game bird hunting seasons, which started with the August 6, 2015, proposed rule. As discussed elsewhere in this document, we supplemented that proposal on December 11, and published final season frameworks on March 28, 2016, that provided the season selection criteria from which the States selected these seasons. This final rule sets the migratory game bird hunting seasons based on that input from the States. We previously addressed all comments in the March 28 **Federal Register**.

National Environmental Policy Act (NEPA)

The programmatic document, "Second Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (EIS 20130139)," filed with the Environmental Protection Agency (EPA) on May 24, 2013, addresses NEPA compliance by the Service for issuance of the annual framework regulations for hunting of migratory game bird species. We published a notice of availability in the **Federal Register** on May 31, 2013 (78 FR 32686), and our Record of Decision on July 26, 2013 (78 FR 45376). We also address NEPA compliance for waterfowl hunting frameworks through the annual preparation of separate environmental assessments, the most recent being "Duck Hunting Regulations for 2016–17," with its corresponding January 2016, finding of no significant impact. In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the person indicated under the caption **FOR FURTHER INFORMATION CONTACT**.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. * * *." Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to jeopardize the continued existence of any endangered or threatened species. Our biological opinions resulting from this section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has reviewed this rule and has determined that this rule is significant because it would have an annual effect of $100 million or more on the economy.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

An updated economic analysis was prepared for the 2013–14 season. This analysis was based on data from the newly released 2011 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in Regulatory Flexibility Act, below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives were: (1) Issue restrictive regulations allowing fewer days than those issued during the 2012–13 season, (2) issue moderate regulations allowing more days than those in alternative 1, and (3) issue liberal regulations identical to the regulations in the 2012–13 season. For the 2013–14 season, we chose Alternative 3, with an estimated consumer surplus across all flyways of $317.8–$416.8 million. For the 2016–17 season, we have also chosen alternative 3. We also chose Alternative 3 for the 2009–10, the 2010–11, the 2011–12, the 2012–13, the 2014–15, and the 2015–16 seasons. The 2013–14 analysis is part of the record for this rule and is available at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2015–0034.

Regulatory Flexibility Act

The annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, 2008, and 2013. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2013 Analysis was based on the 2011 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.5 billion at small businesses in 2013. Copies of the Analysis are available upon request from the Division of Migratory Bird Management (see **FOR FURTHER INFORMATION CONTACT**) or from our Web site at *http://www.fws.gov/migratorybirds* or at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2015–0034.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule will have an annual effect on the economy of $100 million or more.

Paperwork Reduction Act

This final rule does not contain any new information collection that requires approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. OMB has reviewed and approved the information collection requirements associated with migratory bird surveys and assigned the following OMB control numbers:

- 1018–0019—North American Woodcock Singing Ground Survey (expires 5/31/2018).
- 1018–0023—Migratory Bird Surveys (expires 6/30/2017). Includes Migratory Bird Harvest Information Program, Migratory Bird Hunter Surveys, Sandhill Crane Survey, and Parts Collection Survey.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act (16 U.S.C. 703–712), does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule allows hunters to exercise otherwise unavailable privileges and, therefore, reduces restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in the August 6 **Federal Register**, we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2016–17 migratory bird hunting season. The resulting proposals were contained in a May 27, 2016, proposed rule (81 FR 34226). By virtue of these actions, we have consulted with affected Tribes.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Review of Public Comments

The preliminary proposed rulemaking (August 6 **Federal Register**) opened the public comment period for 2016–17 migratory game bird hunting regulations. We previously addressed all comments in a March 28, 2016, **Federal Register** publication (81 FR 17302).

Regulations Promulgation

The rulemaking process for migratory game bird hunting, by its nature, operates under a time constraint as seasons must be established each year or hunting seasons remain closed. However, we intend that the public be provided extensive opportunity for public input and involvement in compliance with Administrative Procedure Act requirements. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment and the most opportunities for public involvement. We also provided notification of our participation in multiple Flyway Council meetings, opportunities for additional public review and comment on all Flyway Council proposals for regulatory change, and opportunities for additional public review during the Service Regulations Committee meeting. Therefore, we believe that sufficient public notice and opportunity for involvement have been given to affected persons.

Further, States need sufficient time to communicate these season selections to their affected publics, and to establish and publicize the necessary regulations and procedures to implement these seasons. Thus, we find that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and therefore, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended (16 U.S.C. 703–711), these regulations will take effect less than 30 days after publication. Accordingly, with each conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State or Territory on those species of migratory birds for which open seasons are now prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: June 30, 2016.

Karen Hyun,

Acting Principal Assistant Deputy Secretary for Fish and Wildlife and Parks.

For the reasons set out in the preamble, title 50, chapter I, subchapter B, part 20, subpart K of the Code of Federal Regulations is amended as follows:

PART 20—MIGRATORY BIRD HUNTING

■ 1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703–712; Fish and Wildlife Act of 1956, 16 U.S.C. 742 a–j; Public Law 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

Note— The following annual hunting regulations provided for by §§ 20.101 through 20.106 and 20.109 of 50 CFR 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

■ 2. Section 20.101 is revised to read as follows:

§ 20.101 Seasons, limits, and shooting hours for Puerto Rico and the Virgin Islands.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset.

CHECK COMMONWEALTH REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

(a) *Puerto Rico.*

	Season dates	Limits	
		Bag	Possession
Doves and Pigeons:			
Zenaida, white–winged, and mourning doves (1)	Sept. 3–Oct. 31	20	20
Scaly–naped pigeons	Sept. 3–Oct. 31	5	5
Ducks	Nov. 12–Dec. 19 &	6	12
	Jan. 14–Jan. 30	6	12
Common Moorhens	Nov. 12–Dec. 19 &	6	12
	Jan. 14–Jan. 30	6	12
Common Snipe	Nov. 12–Dec. 19 &	8	16
	Jan. 14–Jan. 30	8	16

(1) Not more than 10 Zenaida and 3 mourning doves in the aggregate.

Restrictions: In Puerto Rico, the season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, purple gallinule, American coot, Caribbean coot, white-crowned pigeon, and plain pigeon.

Closed Areas: Closed areas are described in the March 28, 2016, **Federal Register** (81 FR 17302).

(b) *Virgin Islands.*

	Season dates	Limits	
		Bag	Possession
Zenaida doves	Sept. 1–Sept. 30	10	10
Ducks	CLOSED.		

Restrictions: In the Virgin Islands, the seasons are closed for ground or quail doves, pigeons, ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, and all other ducks, and purple gallinule.

Closed Areas: Ruth Cay, just south of St. Croix, is closed to the hunting of migratory game birds. All Offshore Cays under jurisdiction of the Virgin Islands Government are closed to the hunting of migratory game birds.

■ 3. Section 20.102 is revised to read as follows:

§ 20.102 Seasons, limits, and shooting hours for Alaska.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset. Area descriptions were published in the March 28, 2016, **Federal Register** (81 FR 17302).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Area seasons	Dates
North Zone	Sept. 1–Dec. 16.
Gulf Coast Zone	Sept. 1–Dec. 16.
Southeast Zone	Sept. 16–Dec. 31.
Pribilof & Aleutian Islands Zone.	Oct. 8–Jan. 22.
Kodiak Zone	Oct. 8–Jan. 22.

Area	Ducks (1)	Daily bag and possession limits						
		Canada geese (2)(3)	White fronted geese (4)(5)	Light geese (6)	Brant	Emperor geese	Snipe	Sandhill cranes (7)
North Zone	10–30	4–12	4–12	6–18	3–9	Closed ..	8–24	3–9
Gulf Coast Zone	8–24	4–12	4–12	6–18	3–9	Closed ..	8–24	2–6
Southeast Zone	7–21	4–12	4–12	6–18	3–9	Closed ..	8–24	2–6
Pribilof and Aleutian Islands Zone	7–21	4–12	4–12	6–18	3–9	Closed ..	8–24	2–6
Kodiak Zone	7–21	4–12	4–12	6–18	3–9	Closed ..	8–24	2–6

(1) The basic duck bag limits may include no more than 2 canvasbacks daily, and may not include sea ducks. In addition to the basic duck limits, the sea duck limit is 10 daily (singly or in the aggregate), including no more than 6 each of either harlequin or long-tailed ducks. Sea ducks include scoters, common and king eiders, harlequin ducks, long-tailed ducks, and common and red-breasted mergansers. The season for Steller's and spectacled eiders is closed.

(2) In Units 5 and 6, the taking of Canada geese is only permitted from September 28 through December 16. In the Middleton Island portion of Unit 6, the taking of Canada geese is by special permit only. The maximum number of Canada goose permits is 10 for the season. A mandatory goose-identification class is required. Hunters must check in and out. The daily bag and possession limit is 1. The season will close if incidental harvest includes 5 dusky Canada geese. A dusky Canada goose is any dark-breasted Canada goose (Munsell 10 YR color value five or less) with a bill length between 40 and 50 millimeters.

(3) In Units 9, 10, 17, and 18, for Canada geese, the daily bag limit is 6 and the possession limit is 18.

(4) In Units 9, 10, and 17, for white-fronted geese, the daily bag limit is 6 and the possession limit is 18.

(5) In Unit 18, for white-fronted geese, the daily bag limit is 10 and the possession limit is 30.

(6) Light geese include snow geese and Ross's geese.

(7) In Unit 17 of the North Zone, for sandhill cranes, the daily bag limit is 2 and the possession limit is 6.

Falconry: The total combined bag and possession limit for migratory game birds taken with the use of a raptor under a falconry permit is 3 per day, 9 in possession, and may not exceed a more restrictive limit for any species listed in this subsection.

Special Tundra Swan Season: In Units 17, 18, 22, and 23, there will be a tundra swan season from September 1 through October 31 with a season limit of 3 tundra swans per hunter. This season is by State registration permit only; hunters will be issued 1 permit allowing the take of up to 3 tundra swans. Hunters will be required to file a harvest report with the State after the season is completed. Up to 500 permits may be issued in Unit 18; 300 permits each in Units 22 and 23; and 200 permits in Unit 17.

■ 4. Section 20.103 is revised to read as follows:

§ 20.103 Seasons, limits, and shooting hours for doves and pigeons.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the March 28, 2016, **Federal Register** (81 FR 17302).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

(a) *Doves.*

Note: Unless otherwise noted, the seasons listed below are for mourning and white-winged doves. Daily bag and possession limits are in the aggregate for the two species.

	Season dates	Limits	
		Bag	Possession
EASTERN MANAGEMENT UNIT			
Alabama:			
North Zone:			
12 noon to sunset	Sept. 10 only	15	15
½ hour before sunrise to sunset	Sept. 11–Oct. 30 &	15	45
	Dec. 8–Jan. 15	15	45
South Zone:			

	Season dates	Limits	
		Bag	Possession
12 noon to sunset	Sept. 17 only	15	15
½ hour before sunrise to sunset	Sept. 18–Sept. 25 &	15	45
	Oct. 8–Oct. 23 &	15	45
	Nov. 12–Jan. 15	15	45
Delaware	Sept. 1–Oct. 1 &	15	45
	Oct. 19–Oct. 22 &	15	45
	Nov. 21–Jan. 14	15	45
Florida:			
12 noon to sunset	Sept. 24–Oct. 24	15	45
½ hour before sunrise to sunset	Nov. 12–Dec. 5 &	15	45
	Dec. 12–Jan. 15	15	45
Georgia:			
12 noon to sunset	Sept. 3 only	15	15
½ hour before sunrise to sunset	Sept. 4–Sept. 18 &	15	45
	Oct. 8–Oct. 28 &	15	45
	Nov. 24–Jan. 15	15	45
Illinois (1)	Sept. 1–Nov. 14 &	15	45
	Dec. 26–Jan. 9	15	45
Indiana	Sept. 1–Oct. 16 &	15	45
	Nov. 1–Nov. 13 &	15	45
	Dec. 10–Jan. 8	15	45
Kentucky:			
11 a.m. to sunset	Sept. 1 only	15	15
½ hour before sunrise to sunset	Sept. 2–Oct. 26 &	15	45
	Nov. 24–Dec. 4 &	15	45
	Dec. 24–Jan. 15	15	45
Louisiana:			
North Zone:			
½ hour before sunrise to sunset	Sept. 3–Sept. 25 &	15	45
	Oct. 8–Nov. 13 &	15	45
	Dec. 17–Jan. 15	15	45
South Zone:			
½ hour before sunrise to sunset	Sept. 3–Sept. 11 &	15	45
	Oct. 8–Nov. 27 &	15	45
	Dec. 17–Jan. 15	15	45
Maryland:			
12 noon to sunset	Sept. 1–Oct. 8	15	45
½ hour before sunrise to sunset	Oct. 21–Nov. 19 &	15	45
	Dec. 17–Jan. 7	15	45
Mississippi:			
North Zone	Sept. 3–Oct. 9 &	15	45
	Oct. 22–Nov. 6 &	15	45
	Dec. 10–Jan. 15	15	45
South Zone	Sept. 3–Sept. 11 &	15	45
	Oct. 8–Nov. 13 &	15	45
	Dec. 3–Jan. 15	15	45
North Carolina	Sept. 3–Oct. 8 &	15	45
	Nov. 21–Dec. 3 &	15	45
	Dec. 5–Jan. 14	15	45
Ohio	Sept. 1–Nov. 6 &	15	45
	Dec. 17–Jan. 8	15	45
Pennsylvania:			
12 noon to sunset	Sept. 1–Oct. 8	15	45
½ hour before sunrise to sunset	Oct. 15–Nov. 26 &	15	45
	Dec. 26–Jan. 3	15	45
Rhode Island:			
12 noon to sunset	Sept. 10–Oct. 9	15	45
½ hour before sunrise to sunset	Oct. 15–Nov. 27 &	15	45
	Dec. 10–Dec. 25	15	45
South Carolina:			
12 noon to sunset	Sept. 3–Sept. 5	12	36
½ hour before sunrise to sunset	Sept. 6–Oct. 15 &	12	36
	Nov. 12–Nov. 26 &	12	36
	Dec. 15–Jan. 15	12	36
Tennessee:			
12 noon to sunset	Sept. 1 only	15	15
½ hour before sunrise to sunset	Sept. 2–Sept. 28 &	15	45
	Oct. 8–Oct. 30 &	15	45
	Dec. 8–Jan. 15	15	45
Virginia:			
12 noon to sunset	Sept. 3–Sept. 9	15	45

	Season dates	Limits	
		Bag	Possession
½ hour before sunrise to sunset	Sept. 10–Oct. 30 &	15	45
	Nov. 19–Nov. 27 &	15	45
	Dec. 24–Jan. 15	15	45
West Virginia:			
12 noon to sunset	Sept. 1 only	15	15
½ hour before sunrise to sunset	Sept. 2–Oct. 15 &	15	45
	Oct. 31–Nov. 19 &	15	45
	Dec. 19–Jan. 12	15	45
Wisconsin	Sept. 1–Nov. 29	15	45
CENTRAL MANAGEMENT UNIT			
Arkansas	Sept. 3–Oct. 23 &	15	45
	Dec. 8–Jan. 15	15	45
Colorado	Sept. 1–Nov. 9	15	45
Iowa	Sept. 1–Nov. 9	15	45
Kansas	Sept. 1–Nov. 29	15	45
Minnesota	Sept. 1–Nov. 29	15	45
Missouri	Sept. 1–Nov. 29	15	45
Montana	Sept. 1–Oct. 30	15	45
Nebraska	Sept. 1–Oct. 30	15	45
New Mexico:			
North Zone	Sept. 1–Nov. 29	15	45
South Zone:	Sept. 1–Oct. 30 &	15	45
	Dec. 3–Jan. 1	15	45
North Dakota	Sept. 1–Nov. 29	15	45
Oklahoma	Sept. 1–Oct. 31 &	15	45
	Dec. 17–Dec. 25	15	45
South Dakota	Sept. 1–Nov. 9	15	45
Texas (2):			
North Zone	Sept. 1–Nov. 13 &	15	45
	Dec. 17–Jan. 1	15	45
Central Zone	Sept. 1–Nov. 6 &	15	45
	Dec. 17–Jan. 8	15	45
South Zone:			
Special Area	Sept. 23–Nov. 9 &	15	45
	Dec. 17–Jan. 23	15	45
(Special Season)	Sept. 3–Sept. 4 &	15	45
12 noon to sunset	Sept. 10–Sept. 11	15	45
Remainder of the South Zone	Sept. 23–Nov. 13 &	15	45
	Dec. 17–Jan. 23	15	45
Wyoming	Sept. 1–Nov. 29	15	45
WESTERN MANAGEMENT UNIT			
Arizona (3)	Sept. 1–Sept. 15 &	15	45
	Nov. 25–Jan. 8	15	45
California (4)	Sept. 1–Sept. 15 &	15	45
	Nov. 14–Dec. 28	15	45
Idaho	Sept. 1–Oct. 30	15	45
Nevada	Sept. 1–Oct. 30	15	45
Oregon	Sept. 1–Oct. 30	15	45
Utah	Sept. 1–Oct. 30	15	45
Washington	Sept. 1–Oct. 30	15	45
OTHER POPULATIONS			
Hawaii (5)	Nov. 5–Nov. 27 &	10	30
	Dec. 3–Jan. 23	10	30

(1) In *Illinois,* shooting hours are sunrise to sunset.

(2) In *Texas,* the daily bag limit is 15 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves with a maximum 90-day season. Possession limits are three times the daily bag limit. During the special season in the Special White-winged Dove Area of the South Zone, the daily bag limit is 15 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 2 may be mourning doves and 2 may be white-tipped doves. Possession limits are three times the daily bag limit.

(3) In *Arizona,* during September 1 through 15, the daily bag limit is 15 mourning and white-winged doves in the aggregate, of which no more than 10 may be white-winged doves. During November 25 through January 8, the daily bag limit is 15 mourning doves.

(4) In *California,* the daily bag limit is 15 mourning and white-winged doves in the aggregate, of which no more than 10 may be white-wing doves.

(5) In *Hawaii,* the season is only open on the island of Hawaii. The daily bag limits are 10 mourning doves, spotted doves, and chestnut-bellied sandgrouse in the aggregate. Shooting hours are from one-half hour before sunrise through one-half hour after sunset. Hunting is permitted only on weekends and State holidays.

(b) *Band-tailed Pigeons.*

	Season dates	Limits	
		Bag	Possession
Arizona	Sept. 2–Sept. 15	2	6
California:			
North Zone	Sept. 19–Sept. 27	2	6
South Zone	Dec. 19–Dec. 27	2	6
Colorado	Sept. 1–Sept. 14	2	6
New Mexico:			
North Zone	Sept. 1–Sept. 14	2	6
South Zone	Oct. 1–Oct. 14	2	6
Oregon	Sept. 15–Sept. 23	2	6
Utah (1)	Sept. 1–Sept. 14	2	6
Washington	Sept. 15–Sept. 23	2	6

(1) In *Utah,* each band-tailed pigeon hunter must have a band-tailed pigeon hunting permit issued by the State.

■ 5. Section 20.104 is revised to read as follows:

§ 20.104 Seasons, limits, and shooting hours for rails, woodcock, and snipe.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the March 28, 2016, **Federal Register** (81 FR 17302).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Snipe
Daily bag limit	25 (1)	15 (2)	3	8
Possession limit	75 (1)	45 (2)	9	24
ATLANTIC FLYWAY				
Connecticut (3)	Sept. 1–Nov. 9	Sept. 1–Nov. 9	Oct. 22–Nov. 19 & Nov. 21–Dec. 6.	Oct. 22–Nov. 19 & Nov. 21–Dec. 6.
Delaware	Sept. 1–Nov. 9	Sept. 1–Nov. 9	Nov. 21–Dec. 3 & Dec. 14–Jan. 14.	Sept. 20–Dec. 3 & Dec. 14–Jan. 14.
Florida	Sept. 1–Nov. 9	Sept. 1–Nov. 9	Dec. 18–Jan. 31	Nov. 1–Feb. 15.
Georgia	Sept. 24–Nov. 10 & Nov. 25–Dec. 16.	Sept. 24–Nov. 10 & Nov. 25–Dec. 16.	Dec. 10–Jan. 23	Nov. 15–Feb. 28.
Maine (4)	Sept. 1–Nov. 9	Closed	Oct. 1–Oct. 29 & Oct. 31–Nov. 15.	Sept. 1–Dec. 16.
Maryland (5)	Sept. 1–Nov. 9	Sept. 1–Nov. 9	Oct. 28–Nov. 25 & Jan. 13–Jan. 28.	Sept. 27–Nov. 25 & Dec. 13–Jan. 28.
Massachusetts (6)	Sept. 1–Nov. 7	Closed	Oct. 5–Oct. 29 & Oct. 31–Nov. 19.	Sept. 1–Dec. 16.
New Hampshire	Closed	Closed	Oct. 1–Nov. 14	Sept. 15–Nov. 14.
New Jersey (7):				
North Zone	Sept. 1–Nov. 9	Sept. 1–Nov. 9	Oct. 15–Nov. 19	Sept. 16–Dec. 31.
South Zone	Sept. 1–Nov. 9	Sept. 1–Nov. 9	Nov. 12–Dec. 3 & Dec. 17–Dec. 30.	Sept. 16–Dec. 31.
New York (8)	Sept. 1–Nov. 9	Closed	Oct. 1–Nov. 14	Sept. 1–Nov. 9.
North Carolina	Sept. 1–Oct. 1 & Oct. 14–Nov. 21.	Sept. 1–Oct. 1 & Oct. 14–Nov. 21.	Dec. 15–Jan. 28	Nov. 14–Feb. 28.
Pennsylvania (9)	Sept. 1–Nov. 9	Closed	Oct. 15–Nov. 26	Oct. 15–Nov. 26.
Rhode Island (10)	Sept. 1–Nov. 9	Sept. 1–Nov. 9	Oct. 15–Nov. 28	Sept. 1–Nov. 9.
South Carolina	Sept. 17–Sept. 21 & Oct. 15–Dec. 18.	Sept. 17–Sept. 21 & Oct. 15–Dec. 18.	Dec. 18–Jan. 31	Nov. 14–Feb. 28.
Vermont	Closed	Closed	Oct. 1–Nov. 14	Oct. 1–Nov. 14.
Virginia	Sept. 10–Nov. 18	Sept. 10–Nov. 18	Oct. 29–Nov. 4 & Dec. 9–Jan. 15.	Oct. 7–Oct. 10 & Oct. 21–Jan. 31.
West Virginia (11)	Sept. 1–Nov. 9	Closed	Oct. 15–Nov. 19 & Nov. 28–Dec. 6.	Sept. 1–Dec. 16.
MISSISSIPPI FLYWAY				
Alabama	Sept. 10–Sept. 25 & Nov. 26–Jan. 18.	Sept. 10–Sept. 25 & Nov. 26–Jan. 18.	Dec. 16–Jan. 29	Nov. 12–Feb. 26.
Arkansas	Sept. 10–Nov. 18	Closed	Nov. 5–Dec. 19	Nov. 1–Feb. 15.
Illinois (12)	Sept. 3–Nov. 11	Closed	Oct. 15–Nov. 28	Sept. 3–Dec. 18.
Indiana (13)	Sept. 1–Nov. 9	Closed	Oct. 15–Nov. 28	Sept. 1–Dec. 16.
Iowa (14)	Sept. 3–Nov. 11	Closed	Oct. 1–Nov. 14	Sept. 3–Nov. 30.
Kentucky	Sept. 1–Nov. 9	Closed	Oct. 22–Nov. 11 & Nov. 14–Dec. 7.	Sept. 21–Oct. 30 & Nov. 24–Jan. 29.

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Snipe
Daily bag limit Possession limit	25 (1) 75 (1)	15 (2) 45 (2)	3 9	8 24
Louisiana:				
West Zone	Sept. 10–Sept. 25 & Nov. 12–Jan. 4.	Sept. 10–Sept. 25 & Nov. 12–Jan. 4.	Dec. 18–Jan. 31	Nov. 2–Dec. 4 & Dec. 17–Feb. 28.
East Zone	Sept. 10–Sept. 25 & Nov. 12–Jan. 4.	Sept. 10–Sept. 25 & Nov. 12–Jan. 4.	Dec. 18–Jan. 31	Nov. 2–Dec. 4 & Dec. 17–Feb. 28 .
Coastal Zone	Sept. 10–Sept. 25 & Nov. 12–Jan. 4.	Sept. 10–Sept. 25 & Nov. 12–Jan. 4.	Dec. 18–Jan. 31	Nov. 2–Dec. 4 & Dec. 17–Feb. 28.
Michigan	Sept. 1–Nov. 9	Closed	Sept. 24–Nov. 7	Sept. 1–Nov. 9.
Minnesota	Sept. 1–Nov. 7	Closed	Sept. 24–Nov. 7	Sept. 1–Nov. 7.
Mississippi	Sept. 3–Nov. 11	Sept. 3–Nov. 11	Dec. 18–Jan. 31	Nov. 14–Feb. 28.
Missouri	Sept. 1–Nov. 9	Closed	Oct. 15–Nov. 28	Sept. 1–Dec. 16.
Ohio	Sept. 1–Nov. 9	Closed	Oct. 8–Nov. 21	Sept. 1–Nov. 29 & Dec. 17–Jan. 2.
Tennessee:				
Reelfoot Zone	Sept. 1–Nov. 9	Closed	Oct. 29–Dec. 12	Nov. 14–Feb. 28.
State Zone	Sept. 1–Nov. 9	Closed	Oct. 29–Dec. 12	Nov. 14–Feb. 28.
Wisconsin:				
North Zone	Sept. 24–Nov. 22	Closed	Sept. 24–Nov. 7	Sept. 24–Nov. 22.
South Zone	Oct. 1–Oct. 9 & Oct. 15–Dec. 4.	Closed	Sept. 24–Nov. 7	Oct. 1–Oct. 9 & Oct. 15–Dec. 4.
Miss. River Zone	Oct. 1–Oct. 7 & Oct. 15–Dec. 6.	Closed	Sept. 24–Nov. 7	Oct. 1–Oct. 7 & Oct. 15–Dec. 6.
CENTRAL FLYWAY				
Colorado	Sept. 1–Nov. 9	Closed	Closed	Sept. 1–Dec. 16.
Kansas	Sept. 1–Nov. 9	Closed	Oct. 15–Nov. 28	Sept. 1–Dec. 16.
Montana	Closed	Closed	Closed	Sept. 1–Dec. 16.
Nebraska (15)	Sept. 1–Nov. 9	Closed	Sept. 24–Nov. 7	Sept. 1–Dec. 16.
New Mexico (16)	Sept. 17–Nov. 25	Closed	Closed	Oct. 15–Jan. 29.
North Dakota	Closed	Closed	Sept. 24–Nov. 7	Sept. 17–Dec. 4.
Oklahoma	Sept. 1–Nov. 9	Closed	Nov. 1–Dec. 15	Oct. 1–Jan. 15.
South Dakota (17)	Closed	Closed	Closed	Sept. 1–Oct. 31.
Texas	Sept. 10–Sept. 25 & Nov. 5–Dec. 28.	Sept. 10–Sept. 25 & Nov. 5–Dec. 28.	Dec. 18–Jan. 31	Oct. 29–Feb. 12.
Wyoming	Sept. 1–Nov. 9	Closed	Closed	Sept. 1–Dec. 16.
PACIFIC FLYWAY				
Arizona (18):				
North Zone	Closed	Closed	Closed	Oct. 7–Jan. 15.
South Zone	Closed	Closed	Closed	Oct. 21–Jan. 29.
California	Closed	Closed	Closed	Oct. 15–Jan. 29.
Colorado	Sept. 1–Nov. 9	Closed	Closed	Sept. 1–Dec. 16.
Idaho:				
Zone 1	Closed	Closed	Closed	Oct. 1–Jan. 13.
Zone 2	Closed	Closed	Closed	Oct. 1–Jan. 13.
Zone 3	Closed	Closed	Closed	Oct. 15–Jan. 27.
Montana	Closed	Closed	Closed	Sept. 1–Dec. 16.
Nevada:				
Northeast Zone	Closed	Closed	Closed	Oct. 1–Oct. 23 & Oct. 26–Jan. 15.
Northwest Zone	Closed	Closed	Closed	Oct. 8–Oct. 23 & Oct. 26–Jan. 22.
South Zone (19)	Closed	Closed	Closed	Oct. 15–Oct. 23 & Oct. 26–Jan. 29.
New Mexico	Sept. 17–Nov. 25	Closed	Closed	Oct. 17–Jan. 31.
Oregon:				
Zone 1	Closed	Closed	Closed	Nov. 5–Feb. 19.
Zone 2	Closed	Closed	Closed	Oct. 8–Nov. 27 & Nov. 30–Jan. 22.
Utah	Closed	Closed	Closed	Oct. 1–Jan. 14.
Washington:				
East Zone	Closed	Closed	Closed	Oct. 15–Oct. 19 & Oct. 22–Jan. 29.
West Zone	Closed	Closed	Closed	Oct. 15–Oct. 19 & Oct. 22–Jan. 29.
Wyoming	Sept. 1–Nov. 9	Closed	Closed	Sept. 1–Dec. 16.

(1) The daily bag and possession limits for sora and Virginia rails apply singly or in the aggregate of the two species.

(2) All daily bag and possession limits for clapper and king rails apply singly or in the aggregate of the two species and, unless otherwise specified, the limits are in addition to the limits on sora and Virginia rails in all States. In *Delaware, Maryland,* and *New Jersey,* the limits for clapper and king rails are 10 daily and 30 in possession.

(3) In *Connecticut,* the limits for clapper and king rails apply singly or in the aggregate of the two species. Limits for clapper and king rail are 10 daily and 30 in possession and may include no more than 1 king rail.

(4) In *Maine,* the daily bag and possession limit for sora and Virginia rails is 25.
(5) In *Maryland,* no more than 1 king rail may be taken per day.
(6) In *Massachusetts,* the sora rail limits are 5 daily and 15 in possession; the Virginia rail limits are 10 daily and 30 in possession.
(7) In *New Jersey,* the season for king rail is closed by State regulation.
(8) In *New York,* the rail daily bag and possession limits are 8 and 24, respectively. Seasons for sora and Virginia rails and snipe are closed on Long Island.
(9) In *Pennsylvania,* the daily bag and possession limits for sora and Virginia rails, singly or in the aggregate, are 3 and 9, respectively.
(10) In *Rhode Island,* the sora and Virginia rails limits are 3 daily and 9 in possession, singly or in the aggregate; the clapper and king rail limits are 1 daily and 3 in possession, singly or in the aggregate; the snipe limits are 5 daily and 15 in possession.
(11) In *West Virginia,* the daily bag and possession limit for sora and Virginia rails is 25; the possession limit for snipe is 16.
(12) In *Illinois,* shooting hours are from sunrise to sunset.
(13) In *Indiana,* the season on Virginia rails is closed.
(14) In *Iowa,* the limits for sora and Virginia rails are 12 daily and 24 in possession.
(15) In *Nebraska,* the rail limits are 10 daily and 30 in possession.
(16) In *New Mexico,* in the Central Flyway portion of the State, the rail limits are 10 daily and 20 in possession.
(17) In *South Dakota,* the snipe limits are 5 daily and 15 in possession.
(18) In *Arizona,* Ashurst Lake in Unit 5B is closed to snipe hunting.
(19) In *Nevada,* the snipe season in that portion of the South Zone including the Moapa Valley to the confluence of the Muddy and Virgin rivers is only open November 1 through January 25.

■ 6. Section 20.105 is revised to read as follows:

§ 20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the March 28, 2016, **Federal Register** (81 FR 17302) and the April 12, 2016, **Federal Register** (81 FR 21480).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

(a) *Common Moorhens and Purple Gallinules.*

	Season dates	Limits	
		Bag	Possession
ATLANTIC FLYWAY			
Delaware	Sept. 1–Nov. 9	15	45
Florida (1)	Sept. 1–Nov.9	15	45
Georgia	Nov. 19–Nov. 27 &	15	45
	Dec. 10–Jan. 29	15	45
New Jersey	Sept. 1–Nov. 9	10	30
New York:			
Long Island	Closed.		
Remainder of State	Sept. 1–Nov. 9	8	24
North Carolina	Sept. 1–Oct. 1 &	15	45
	Oct. 14–Nov. 21	15	45
Pennsylvania	Sept. 1–Nov. 9	3	9
South Carolina	Sept. 17–Sept. 21 &	15	45
	Oct. 15–Dec. 18	15	45
Virginia	Sept. 10–Nov. 18	15	45
West Virginia	Oct. 1–Oct. 8 &	15	30
	Nov. 28–Jan. 28	15	30
MISSISSIPPI FLYWAY			
Alabama	Sept. 10–Sept. 25 &	15	45
	Nov. 26–Jan. 18	15	45
Arkansas	Sept. 1–Nov. 9	15	45
Kentucky	Sept. 1–Nov. 9	3	9
Louisiana	Sept. 10–Sept. 25 &	15	45
	Nov. 12–Jan. 4	15	45
Michigan	Sept. 1–Nov. 9	1	3
Minnesota (2):			
North Zone	Sept. 24–Nov. 22	15	45
Central Zone	Sept. 24–Oct. 2 &	15	45
	Oct. 8–Nov. 27	15	45
South Zone	Sept. 24–Oct. 2 &	15	45
	Oct. 15–Dec. 4	15	45
Mississippi	Sept. 3–Nov. 11	15	45
Ohio	Sept. 1–Nov. 9	15	45
Tennessee:	Sept. 1–Nov. 9	15	45
Wisconsin:.			
North Zone	Sept. 24–Nov. 22	15	30
South Zone	Oct. 1–Oct. 9 &	15	30
	Oct. 15–Dec. 4	15	30
Mississippi River Zone	Oct. 1–Oct. 7 &	15	30
	Oct. 15–Dec. 6	15	30
CENTRAL FLYWAY			

	Season dates	Limits	
		Bag	Possession
New Mexico:.			
Zone 1	Sept. 17–Nov. 25	1	3
Zone 2	Sept. 17–Nov. 25	1	3
Oklahoma	Sept. 1–Nov. 9	15	45
Texas	Sept. 10–Sept. 25 &	15	45
	Nov. 5–Dec. 28	15	45
PACIFIC FLYWAY			
All States	Seasons are in aggregate with coots and listed in paragraph (e).		

(1) The season applies to common moorhens only.
(2) In *Minnesota,* the daily bag limit is 15 and the possession limit is 45 coots and moorhens in the aggregate.

(b) *Special Sea Duck Seasons* (scoters, eiders, and long-tailed ducks in Atlantic Flyway).

Within the special sea duck areas, the daily bag limit is 5 scoters, eiders, and long-tailed ducks in the aggregate, including no more than 4 scoters, 4 eiders, and 4 long-tailed ducks. Possession limits are three times the daily bag limit. These limits may be in addition to regular duck bag limits only during the regular duck season in the special sea duck hunting areas.

	Season dates	Limits	
		Bag	Possession
Connecticut	Nov. 12–Jan. 20	5	15
Delaware	Nov. 21–Jan. 28	5	15
Georgia	Nov. 19–Nov. 27 &	5	15
	Dec. 10–Jan. 29	5	15
Maine	Nov. 11–Jan. 19	5	15
Maryland	Nov. 5–Jan. 13	5	15
Massachusetts (1)	Nov. 21–Jan. 28	5	15
New Hampshire	Nov. 15–Jan. 13	5	15
New Jersey	Nov. 5–Jan. 13	5	15
North Carolina	Nov. 21–Jan. 28	5	15
Rhode Island	Nov. 24–Jan. 22	5	15
South Carolina	Nov. 19–Nov. 26 &	5	15
	Dec. 10–Jan. 29	5	15
Virginia	Nov. 11–Jan. 9	5	15

Note: Notwithstanding the provisions of this Part 20, the shooting of crippled waterfowl from a motorboat under power will be permitted in *Connecticut, Delaware, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Rhode Island, South Carolina,* and *Virginia* in those areas described, delineated, and designated in their respective hunting regulations as special sea duck hunting areas.

(1) In *Massachusetts,* the daily bag limit may not include more than 1 hen eider. Possession limits are three times the daily bag limit.

(c) *Early (September) Duck Seasons.*

Note: Unless otherwise specified, the seasons listed below are for teal only.

	Season dates	Limits	
		Bag	Possession
ATLANTIC FLYWAY			
Delaware (1)	Sept. 9–Sept. 27	6	18
Florida (2)	Sept. 17–Sept. 25	6	18
Georgia	Sept. 10–Sept. 25	6	18
Maryland (1)	Sept. 16–Sept. 30	6	18
North Carolina (1)	Sept. 10–Sept. 28	6	18
South Carolina (3)	Sept. 9–Sept. 24	6	18
Virginia (1)	Sept. 17–Sept. 30	6	18
MISSISSIPPI FLYWAY			
Alabama	Sept. 10–Sept. 25	6	18
Arkansas (3)	Sept. 10–Sept. 25	6	18
Illinois (3)	Sept. 3–Sept. 18	6	18
Indiana (3)	Sept. 3–Sept. 18	6	18
Iowa (3)	Sept. 3–Sept. 18	6	18
Kentucky (2)	Sept. 17–Sept. 25	6	18
Louisiana	Sept. 10–Sept. 25	6	18
Michigan	Sept. 1–Sept. 7	6	18
Mississippi	Sept. 10–Sept. 25	6	18

	Season dates	Limits	
		Bag	Possession
Missouri (3)	Sept. 10–Sept. 25	6	18
Ohio (3)	Sept. 3–Sept. 18	6	18
Tennessee (2)	Sept. 10–Sept. 18	6	18
Wisconsin	Sept.1–Sept. 7	6	18
CENTRAL FLYWAY			
Colorado (1)	Sept. 10–Sept. 18	6	18
Kansas:			
Low Plains	Sept. 10–Sept. 25	6	18
High Plains	Sept. 17–Sept. 25	6	18
Nebraska (1):			
Low Plains	Sept. 3–Sept. 18	6	18
High Plains	Sept. 3–Sept. 11	6	18
New Mexico	Sept. 17–Sept. 25	6	18
Oklahoma	Sept. 10–Sept. 25	6	18
Texas:.			
High Plains	Sept. 10–Sept. 25	6	18
Rest of State	Sept. 10–Sept. 25	6	18

(1) Area restrictions. See State regulations.

(2) In *Florida*, *Kentucky*, and *Tennessee*, the daily bag limit for the first 5 days of the season is 6 wood ducks and teal in the aggregate, of which no more than 2 may be wood ducks. During the last 4 days of the season, the daily bag limit is 6 teal only. The possession limit is three times the daily bag limit.

(3) Shooting hours are from sunrise to sunset.

(d) *Special Early Canada Goose Seasons.*

	Season dates	Limits	
		Bag	Possession
ATLANTIC FLYWAY			
Connecticut (1):			
North Zone	Sept. 1–Sept. 30	15	45
South Zone	Sept. 13–Sept. 30	15	45
Delaware	Sept. 1–Sept. 24	15	45
Florida	Sept. 3–Sept. 25	5	15
Georgia	Sept. 3–Sept. 25	5	15
Maine:.			
Northern Zone	Sept. 1–Sept. 24	6	18
Southern Zone	Sept. 1–Sept. 24	8	24
Coastal Zone	Sept. 1–Sept. 24	8	24
Maryland (1)(2):			
Eastern Unit	Sept. 1–Sept. 15	8	24
Western Unit	Sept. 1–Sept. 24	8	24
Massachusetts:.			
Central Zone	Sept. 6–Sept. 23	7	21
Coastal Zone	Sept. 6–Sept. 23	7	21
Western Zone	Sept. 6–Sept. 23	7	21
New Hampshire	Sept. 1–Sept. 25	5	15
New Jersey (1)(2)(3)	Sept. 1–Sept. 30	15	45
New York (4):			
Lake Champlain Zone	Sept. 1–Sept. 25	8	24
Northeastern Zone	Sept. 1–Sept. 25	15	45
East Central Zone	Sept. 1–Sept. 25	15	45
Hudson Valley Zone	Sept. 1–Sept. 25	15	45
West Central Zone	Sept. 1–Sept. 25	15	45
South Zone	Sept. 1–Sept. 25	15	45
Western Long Island Zone	Closed.		
Central Long Island Zone	Sept. 6–Sept. 30	15	45
Eastern Long Island Zone	Sept. 6–Sept. 30	15	45
North Carolina (5)(6)	Sept. 1–Sept. 30	15	45
Pennsylvania (7):.			
SJBP Zone (8)	Sept. 1–Sept. 24	3	9
Rest of State (9)	Sept. 1–Sept. 24	8	24
Rhode Island (1)	Sept. 1–Sept. 30	15	45
South Carolina			
Early-Season Hunt Unit	Sept. 1–Sept. 30	15	45
Vermont:			
Lake Champlain Zone	Sept. 1–Sept. 25	8	24
Interior Vermont Zone	Sept. 1–Sept. 25	8	24

	Season dates	Limits	
		Bag	Possession
Connecticut River Zone (10)	Sept. 1–Sept. 25	5	15
Virginia (11)	Sept. 1–Sept. 25	10	30
West Virginia	Sept. 1–Sept. 10	5	15
CENTRAL FLYWAY			
North Dakota:			
Missouri River Zone	Sept. 1–Sept. 7	15	45
Remainder of State	Sept. 1–Sept. 15	15	45
Oklahoma	Sept. 10–Sept. 19	8	24
South Dakota (12)	Sept. 3–Sept. 30	15	45
Texas			
East Zone	Sept. 10–Sept. 25	5	15
PACIFIC FLYWAY			
Colorado	Sept. 1–Sept. 9	4	12
Idaho			
Zone 4	Sept. 1–Sept. 15	5	15
Oregon:			
Northwest Permit Zone	Sept. 10–Sept. 18	5	15
Southwest Zone	Sept. 10–Sept. 14	5	15
Eastern Zone	Sept. 10–Sept. 14	5	15
Klamath County Zone	Sept. 10–Sept. 14	5	15
Harney and Lake County Zone	Sept. 10–Sept. 14	5	15
Malheur County Zone	Sept. 10–Sept. 14	5	15
Washington:			
Areas 1 & 3	Sept. 10–Sept. 15	5	15
Areas 2A & 2B (13)	Sept. 3–Sept. 11	5	15
Area 4 & 5	Sept. 10–Sept. 11	5	10
Wyoming:			
Teton County Zone	Sept. 1–Sept. 8	3	9
Balance of State Zone	Sept. 1–Sept. 8	2	6

(1) Shooting hours are one-half hour before sunrise to one-half hour after sunset.

(2) The use of shotguns capable of holding more than 3 shotshells is allowed.

(3) The use of electronic calls is allowed.

(4) In *New York,* in all areas except the Northeastern and Southeastern Goose Hunting Area, shooting hours are one-half hour before sunrise to one-half hour after sunset, the use of shotguns capable of holding more than 3 shotshells is allowed, and the use of electronic calls is allowed. In the Northeastern and Southeastern Goose Hunting Areas, shooting hours are one-half hour before sunrise to one-half hour after sunset, shotguns capable of holding more than 3 shotshells are allowed, and electronic calls are allowed only from September 1 to September 16 and September 19 to September 25. On September 17 and September 18, shooting hours are one-half hour before sunrise to sunset, shotguns must be capable of holding no more than 3 shotshells, and electronic calls are not allowed.

(5) In *North Carolina,* the use of unplugged guns and electronic calls is allowed in that area west of U.S. Highway 17 only.

(6) In *North Carolina,* shooting hours are one-half hour before sunrise to one-half hour after sunset in that area west of U.S. Highway 17 only.

(7) In *Pennsylvania,* shooting hours are one-half hour before sunrise to one-half hour after sunset from September 1 to September 16, September 19 to September 23. On September 17 and September 24, shooting hours are one-half hour before sunrise to sunset.

(8) In *Pennsylvania,* in the area south of SR 198 from the Ohio State line to intersection of SR 18, SR 18 south to SR 618, SR 618 south to U.S. Route 6, U.S. Route 6 east to U.S. Route 322/SR 18, U.S. Route 322/SR 18 west to intersection of SR 3013, SR 3013 south to the Crawford/Mercer County line, not including the Pymatuning State Park Reservoir and an area to extend 100 yards inland from the shoreline of the reservoir, excluding the area east of SR 3011 (Hartstown Road), the daily bag limit is 1 goose with a possession limit of 3 geese. The season is closed on State Game Lands 214. However, during youth waterfowl hunting days, regular season regulations apply.

(9) In *Pennsylvania,* in the area of Lancaster and Lebanon Counties north of the Pennsylvania Turnpike, east of SR 501 to SR 419, south of SR 419 to the Lebanon-Berks County line, west of the Lebanon-Berks County line and the Lancaster-Berks County line to SR 1053, west of SR 1053 to the Pennsylvania Turnpike I–76, the daily bag limit is 1 goose with a possession limit of 3 geese. On State Game Lands No. 46 (Middle Creek Wildlife Management Area), the season is closed. However, during youth waterfowl hunting days, regular season regulations apply.

(10) In *Vermont,* the season in the Connecticut River Zone is the same as the New Hampshire Inland Zone season, set by New Hampshire.

(11) In *Virginia,* shooting hours are one-half hour before sunrise to one-half hour after sunset from September 1 to September 16, and one-half hour before sunrise to sunset from September 17 to September 25 in the area east of I–95 where the September teal season is open. Shooting hours are one-half hour before sunrise to one-half hour after sunset from September 1 to September 20, and one-half hour before sunrise to sunset from September 21 to September 25 in the area west of I–95.

(12) See State regulations for additional information and restrictions.

(13) In *Washington,* in Pacific County, the daily bag and possession limit is 15 and 45 Canada geese, respectively.

(e) *Waterfowl, Coots, and Pacific-Flyway Seasons for Common Moorhens.*

Definitions

The Atlantic Flyway: Includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

The Mississippi Flyway: Includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

The Central Flyway: Includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

The Pacific Flyway: Includes the States of Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

Light Geese: Includes lesser snow (including blue) geese, greater snow geese, and Ross's geese.

Dark Geese: Includes Canada geese, white-fronted geese, emperor geese, brant (except in California, Oregon, Washington, and the Atlantic Flyway), and all other geese except light geese.

ATLANTIC FLYWAY

Flyway-Wide Restrictions

Duck Limits: The daily bag limit of 6 ducks may include no more than 4 mallards (2 female mallards), 2 scaup, 1 black duck, 2 pintails, 2 canvasbacks, 1 mottled duck, 3 wood ducks, 2 redheads, 4 scoters, 4 eiders, 4 long-tailed ducks, and 1 fulvous tree duck. The possession limit is three times the daily bag limit.

Harlequin Ducks: All areas of the Flyway are closed to harlequin duck hunting.

Merganser Limits: The daily bag limit is 5 mergansers and may include no more than 2 hooded mergansers. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, of which only 2 may be hooded mergansers. The possession limit is three times the daily bag limit.

	Season dates	Limits	
		Bag	Possession
Connecticut			
Ducks and Mergansers:		6	18
North Zone	Oct. 8–Oct. 15 &		
	Nov. 10–Jan. 10		
South Zone	Oct. 8–Oct. 11 &		
	Nov. 16–Jan. 20		
Coots	Same as for Ducks	15	45
Canada Geese:			
AFRP Unit	Oct. 10–Oct. 13 &	5	15
	Nov. 11–Nov. 30 &	5	15
	Dec. 10–Feb. 15	5	15
NAP H-Unit	Oct. 8–Oct. 15 &	3	9
	Nov. 10–Jan. 21	3	9
AP Unit	Oct. 10–Oct. 13 &	3	9
	Nov. 23–Jan. 14	3	9
Special Season	Jan. 25–Feb. 15	5	15
Light Geese:			
North Zone	Oct. 1–Jan. 14 &	25	
	Feb. 21–Mar. 10	25	
South Zone	Oct. 1–Dec. 1 &	25	
	Jan. 7–Mar. 10	25	
Brant:			
North Zone	Nov. 14–Jan. 10	2	6
South Zone	Nov. 24–Jan. 20	2	6
Delaware			
Ducks	Oct. 28–Nov. 8 &	6	18
	Nov. 21–Nov. 26 &	6	18
	Dec. 9–Jan. 28	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese	Nov. 21–Nov. 26 &	2	6
	Dec. 16–Feb. 4	2	6
Light Geese (1)	Oct. 5–Feb. 4	25	
	Feb. 11	25	
Brant	Dec. 3–Jan. 28	2	6
Florida			
Ducks	Nov. 19–Nov. 27 &	6	18
	Dec. 10–Jan. 29	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese	Nov. 19–Nov. 27 &	5	15
	Dec. 1–Jan. 30	5	15
Light Geese	Same as for Ducks	15	
Georgia			
Ducks	Nov. 19–Nov. 27 &	6	18
	Dec. 10–Jan. 29	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese	Oct. 8–Oct. 23 &	5	15
	Nov. 19–Nov. 27 &	5	15
	Dec. 10–Jan. 29	5	15
	Same as for Canada Geese		
Light Geese	Geese	5	15
Brant	Closed		
Maine			
Ducks (2):		6	18
North Zone	Sept. 26–Dec. 3.		

	Season dates	Limits	
		Bag	Possession
South Zone	Oct. 1–Oct. 15 &		
	Nov. 1–Dec. 24.		
Coastal Zone	Oct. 1–Oct. 15 &		
	Nov. 11–Jan. 4.		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	5	15
Canada Geese:			
North Zone	Oct. 1–Dec. 21	3	9
South Zone	Oct. 1–Oct. 27 &	3	9
	Nov. 1–Dec. 24	3	9
Coastal Zone	Oct. 1–Oct. 27 &	3	9
	Nov. 11–Jan. 4	3	9
	Oct. 1–Jan. 31	25	
Light Geese.			
Brant:			
North Zone	Sept. 26–Dec. 3	2	6
South Zone	Oct. 1–Oct. 15 &	2	6
	Nov. 1–Dec. 24	2	6
Coastal Zone	Oct. 1–Oct. 15 &	2	6
	Nov. 11–Jan. 4	2	6
Maryland			
Ducks and Mergansers (3)	Oct. 15–Oct. 22 &	6	18
	Nov. 12–Nov. 25 &	6	18
	Dec. 13–Jan. 28	6	18
Coots	Same as for Ducks	15	45
Canada Geese:			
RP Zone	Nov. 19–Nov. 25 &	5	15
	Dec. 13–Mar. 8	5	15
AP Zone	Nov. 19–Nov. 25 &	2	6
	Dec. 16–Feb. 4	2	6
Light Geese	Oct. 1–Nov. 25 &	25	
	Dec. 12–Feb. 4	25	
	Feb. 11	25	
Brant	Nov. 8–Nov. 25 &	2	6
	Dec. 12–Jan. 31	2	6
Massachusetts			
Ducks (4):		6	18
Western Zone	Oct. 10–Nov. 26 &		
	Dec. 5–Dec. 24.		
Central Zone	Oct. 11–Nov. 26 &		
	Dec. 12–Jan. 2.		
Coastal Zone	Oct. 14–Oct. 22 &		
	Nov. 17–Jan. 16.		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
NAP Zone.			
Central Zone	Oct. 11–Nov. 26 &	3	9
	Dec. 12–Jan. 13	3	9
(Special season)	Jan. 16–Feb. 4	5	15
Coastal Zone	Oct. 14–Oct. 22 &	3	9
	Nov. 17–Jan. 27	3	9
(Special season) (5)	Jan. 28–Feb. 15	5	15
AP Zone	Oct. 10–Nov. 26 &	3	9
	Dec. 5–Dec. 13	3	9
Light Geese:			
Western Zone	Oct. 10–Nov. 26 &	15	45
	Dec. 5–Dec. 13	15	45
Central Zone	Oct. 11–Nov. 26 &	15	45
	Dec. 12–Jan. 13	15	45
	Jan. 16–Feb. 4	15	45
Coastal Zone (5)	Oct. 14–Oct. 22 &	15	45
	Nov. 17–Jan. 27	15	45
	Jan. 28–Feb. 15	15	45
Brant:.			
Western & Central Zone	Closed		
Coastal Zone	Nov. 21–Jan. 28	2	6
New Hampshire			
Ducks:		6	18
Northern Zone	Oct. 4–Dec. 2		
Inland Zone	Oct. 4–Nov. 6 &		
	Nov. 22–Dec. 17		

	Season dates	Limits	
		Bag	Possession
Coastal Zone	Oct. 5–Oct. 16 &		
	Nov. 22–Jan. 8		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
Northern Zone	Oct. 4–Dec. 12	3	9
Inland Zone	Oct. 4–Nov. 6 &	3	9
	Nov. 22–Dec. 27	3	9
Coastal Zone	Oct. 5–Oct. 16 &	3	9
	Nov. 22–Jan. 18	3	9
Light Geese:			
Northern Zone	Oct. 4–Dec. 12	25	
Inland Zone	Oct. 4–Dec. 27	25	
Coastal Zone	Oct. 5–Jan. 18	25	
Brant:			
Northern Zone	Oct. 4–Dec. 2	2	6
Inland Zone	Oct. 4–Nov. 6 &	2	6
	Nov. 22–Dec. 17	2	6
Coastal Zone	Oct. 5–Oct. 16 &	2	6
	Nov. 22–Jan. 8	2	6
New Jersey			
Ducks:		6	18
North Zone	Oct. 8–Oct. 15 &		
	Nov. 5–Jan. 5		
South Zone	Oct. 22–Oct. 29 &		
	Nov. 12–Jan. 12		
Coastal Zone	Nov. 10–Nov. 12 &		
	Nov. 24–Jan. 28		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada and White-fronted Geese:			
North Zone	Nov. 12–Nov. 26 &	3	9
	Dec. 10–Jan. 21	3	9
South Zone	Nov. 12–Nov. 26 &	3	9
	Dec. 10–Jan. 21	3	9
Coastal Zone	Nov. 10–Nov. 12 &	5	15
	Nov. 24–Feb. 15	5	15
Light Geese:			
Special Season Zone	Jan. 23–Feb. 15	5	15
North Zone	Oct. 17–Feb. 15	25	
South Zone	Oct. 17–Feb. 15	25	
Coastal Zone	Oct. 17–Feb. 15	25	
Brant:			
North Zone	Oct. 8–Oct. 15 &	1	3
	Nov. 5–Jan. 5	1	3
South Zone	Oct. 22–Oct. 29 &	1	3
	Nov. 12–Jan. 12	1	3
Coastal Zone	Nov. 10–Nov. 12 &	1	3
	Nov. 24–Jan. 28	1	3
New York			
Ducks and Mergansers:		6	18
Long Island Zone	Nov. 24–Nov. 27 &		
	Dec. 5–Jan. 29		
Lake Champlain Zone	Oct. 12–Oct. 16 &		
	Oct. 29–Dec. 22		
Northeastern Zone	Oct. 8–Oct. 30 &		
	Nov. 5–Dec. 11		
Southeastern Zone	Oct. 1–Oct. 10 &		
	Nov. 12–Dec. 31		
Western Zone	Oct. 22–Dec. 4 &		
	Dec. 31–Jan. 15		
Coots	Same as for Ducks	15	45
Canada Geese:			
Western Long Island (AFRP)	Oct. 8–Oct. 23 &	8	24
	Nov. 24–Nov. 27 &	8	24
	Dec. 5–Feb. 27	8	24
Central Long Island (NAP–L)	Nov. 24–Nov. 27 &	3	9
	Dec. 5–Feb. 8	3	9
Eastern Long Island (NAP–H)	Nov. 24–Feb. 1	3	9
Lake Champlain (AP) Zone	Oct. 12–Nov. 30	3	9
Northeast (AP) Zone	Oct. 22–Nov. 14 &	3	9
	Nov. 16–Dec. 11	3	9

	Season dates	Limits	
		Bag	Possession
East Central (AP) Zone	Oct. 22–Nov. 18 &	3	9
	Dec. 3–Dec. 24	3	9
Hudson Valley (AP) Zone	Nov. 5–Nov. 17 &	3	9
	Dec. 3–Jan. 8	3	9
West Central (AP) Zone	Oct. 22–Nov. 24 &	3	9
	Dec. 31–Jan. 15	3	9
South (AFRP)	Oct. 22–Dec. 17 &	5	15
	Dec. 31–Jan. 15 &	5	15
	Mar. 4–Mar. 10	5	15
Light Geese (6):			
Long Island Zone	Nov. 24–Mar. 10	25	
Lake Champlain Zone	Oct. 12–Dec. 31 &	25	
	Feb. 15–Mar. 10	25	
Northeastern Zone	Oct. 1–Jan. 15	25	
Southeastern Zone	Oct. 1–Jan. 15	25	
Western Zone	Oct. 1–Jan. 15	25	
Brant:			
Long Island Zone	Nov. 24–Nov. 27 &	2	6
	Dec. 5–Jan. 29	2	6
Lake Champlain Zone	Oct. 5–Dec. 3	2	6
Northeastern Zone	Oct. 1–Nov. 29	2	6
Southeastern Zone	Oct. 1–Nov. 29	2	6
Western Zone	Oct. 1–Nov. 29	2	6
North Carolina			
Ducks (7)	Oct. 5–Oct. 8 &	6	18
	Nov. 12–Dec. 3 &	6	18
	Dec. 17–Jan. 28	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
RP Hunt Zone	Oct. 5–Oct. 15 &	5	15
	Nov. 12–Dec. 3 &	5	15
	Dec. 17–Feb. 11	5	15
SJBP Hunt Zone	Oct. 5–Nov. 4 &	5	15
	Nov. 12–Dec. 31	5	15
Northeast Hunt Zone (8)	Jan. 13–Jan. 28	1	3
Light Geese	Oct. 11–Feb. 11	25	
Brant	Dec. 17–Jan. 28	1	3
Pennsylvania			
Ducks:		6	18
North Zone	Oct. 8–Nov. 19 &		
	Dec. 20–Jan. 14		
South Zone	Oct. 15–Oct. 22 &		
	Nov. 22–Jan. 21		
Northwest Zone	Oct. 8–Dec. 10		
	Dec. 27–Dec. 31		
Lake Erie Zone	Oct. 31–Jan. 7		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
Eastern (AP) Zone	Nov. 15–Nov. 26 &	3	9
	Dec. 17–Jan. 31	3	9
SJBP Zone	Oct. 8–Nov. 26 &	3	9
	Dec. 12–Jan. 20	3	9
Resident (RP) Zone	Oct. 22–Nov. 26 &	5	15
	Dec. 17–Jan. 14 &	5	15
	Feb. 1–Feb. 28	5	15
Light Geese:			
Eastern (AP) Zone	Oct. 1–Jan. 31	25	
SJBP Zone	Oct. 1–Jan. 20	25	
Resident (RP) Zone	Oct. 27–Feb. 28	25	
Brant	Oct. 8–Dec. 16	2	6
Rhode Island			
Ducks	Oct. 7–Oct. 10 &	6	18
	Nov. 23–Nov. 27 &	6	18
	Dec. 3–Jan. 22	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese	Nov. 19–Nov. 27 &	3	9
	Dec. 3–Jan. 30	3	9
Special season	Feb. 4–Feb. 10	5	15
Light Geese	Oct. 16–Jan. 30	25	

	Season dates	Limits	
		Bag	Possession
Brant	Dec. 4–Jan. 22	2	6
Ducks (9)(10)	Nov. 12 &	6	18
	Nov. 19–Nov. 26 &	6	18
	Dec. 10–Jan. 29	6	18
Mergansers (11)	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada and White-fronted Geese (12)	Nov. 19–Nov. 26 &	5	15
	Dec. 10–Jan. 29 &	5	15
	Feb. 12–Feb. 27	5	15
Light Geese	Nov. 19–Nov. 26 &	25	
	Dec. 10–Jan. 29 &	25	
	Feb. 12–Feb. 27	25	
Brant	Nov. 19–Nov. 26 &	2	6
	Dec. 10–Jan. 29	2	6
Vermont			
Ducks:		6	18
Lake Champlain Zone	Oct. 12–Oct 16 &		
	Oct. 29–Dec. 22		
Interior Zone	Oct. 12–Dec. 10		
Connecticut River Zone	Oct. 4–Nov. 6 &		
	Nov. 22–Dec. 17		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
Lake Champlain Zone	Oct. 12–Nov. 30	3	9
Interior Zone	Oct. 12–Nov. 30	3	9
Connecticut River Zone	Oct. 4–Nov. 6 &	3	9
	Nov. 22–Dec. 27	3	9
Light Geese:			
Lake Champlain Zone	Oct. 12–Dec. 31 &	25	
	Feb. 15–Mar. 10	25	
Interior Zone	Oct. 12–Dec. 31 &	25	
	Feb. 15–Mar. 10	25	
Connecticut River Zone	Oct. 4–Dec. 27	25	
Brant:			
Lake Champlain Zone	Oct. 5–Dec. 3	2	6
Interior Zone	Oct. 5–Dec. 3	2	6
Connecticut River Zone	Oct. 4–Nov. 6 &	2	6
	Nov. 22–Dec. 17	2	6
Virginia			
Ducks (13)	Oct. 7–Oct. 10 &	6	18
	Nov. 16–Nov. 27 &	6	18
	Dec. 17–Jan. 29	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
Eastern (AP) Zone	Nov. 16–Nov. 27 &	2	6
	Dec. 23–Jan. 29	2	6
Western (SJBP) Zone	Nov. 16–Nov. 27 &	3	9
	Dec. 19–Jan. 14 &	3	9
(Special season)	Jan. 15–Feb. 15	5	15
Western (RP) Zone	Nov. 16–Nov. 27 &	5	15
	Dec. 17–Feb. 22	5	15
Light Geese	Oct. 17–Jan. 31	25	
Brant	Nov. 16–Nov. 27 &	2	6
	Dec. 17–Jan. 29	2	6
West Virginia			
Ducks (14)	Oct. 1–Oct. 8 &	6	18
	Nov. 7–Nov. 12 &	6	18
	Dec. 14–Jan. 28	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	30
Canada Geese	Oct. 1–Oct. 15 &	5	15
	Nov. 7–Nov. 12 &	5	15
	Dec. 1–Jan. 28	5	15
Light Geese	Same as for Canada Geese	5	15
Brant	Nov. 30–Jan. 28	1	3

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(1) In *Delaware,* the Bombay Hook National Wildlife Refuge (NWR) snow goose season is open Mondays, Wednesdays, and Fridays only.

(2) In *Maine,* the daily bag limit may include no more than 4 of any species, with no more than 12 of any one species in possession. The season for Barrow's goldeneye is closed.

(3) In *Maryland,* the black duck season is closed October 15 through October 22. Additionally, the daily bag limit of 6 ducks may include no more than 5 sea ducks, of which no more than 4 may be scoters, eiders, or long-tailed ducks.

(4) In *Massachusetts,* the daily bag limit may include no more than 4 of any single species in addition to the flyway-wide bag restrictions.

(5) In *Massachusetts,* the January 23 to February 13 portion of the season in the Coastal Zone is restricted to that portion of the Coastal Zone north of the Cape Cod Canal.

(6) In *New York,* the use of electronic calls and shotguns capable of holding more than 3 shotshells are allowed for hunting of light geese on any day when all other waterfowl hunting seasons are closed.

(7) In *North Carolina,* the season is closed for black ducks October 5 through October 8 and November 12 through November 18. The daily bag limit for black and mottled ducks is combined with no more than 1 allowed in the daily bag.

(8) In *North Carolina,* a permit is required to hunt Canada geese in the Northeast Hunt Zone.

(9) In *South Carolina,* the daily bag limit of 6 may not exceed 1 black-bellied whistling duck, and either 1 black duck or 1 mottled duck in the aggregate.

(10) In *South Carolina,* on November 12, only hunters 17 years of age or younger can hunt ducks, coots, and mergansers. The youth must be accompanied by a person at least 21 years of age who is properly licensed, including State and Federal waterfowl stamps. Youth who are 16 or 17 years of age who hunt on this day are not required to have a State license or State waterfowl stamp but must possess a Federal waterfowl stamp and migratory bird permit.

(11) In *South Carolina,* the daily bag limit for mergansers may include no more than 1 hooded merganser.

(12) In *South Carolina,* the daily bag limit may include no more than 2 white-fronted geese.

(13) In *Virginia,* the season is closed for black ducks October 7 through October 10.

(14) In *West Virginia,* the daily bag limit may include no more than 4 long-tailed ducks, and the season is closed for eiders, whistling ducks, and mottled ducks.

MISSISSIPPI FLYWAY

Flyway-wide Restrictions

Duck Limits: The daily bag limit of 6 ducks may include no more than 4 mallards (no more than 2 of which may be females), 1 mottled duck, 1 black duck, 2 pintails, 2 canvasbacks, 2 redheads, 3 scaup, and 3 wood ducks. The possession limit is three times the daily bag limit.

Merganser Limits: The daily bag limit is 5 mergansers and may include no more than 2 hooded mergansers. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, of which only 2 may be hooded mergansers. The possession limit is three times the daily bag limit.

	Season dates	Limits	
		Bag	Possession
Alabama			
Ducks:		6	18
North Zone	Nov. 25–Nov. 26 &		
	Dec. 3–Jan. 29		
South Zone	Same as North Zone		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Dark Geese (1)(2):			
SJBP Zone	Sept. 1–Sept 30 &	5	15
	Nov. 25–Nov. 26 &	5	15
	Dec. 3–Jan. 29	5	15
North Zone	Same as SJBP Zone	5	15
South Zone	Same as SJBP Zone	5	15
Light Geese:			
SJBP Zone	Same as for Dark Geese	5	15
North Zone	Same as for Dark Geese	5	15
South Zone	Same as for Dark Geese	5	15
Arkansas			
Ducks	Nov. 19–Nov. 27 &	6	18
	Dec. 8–Dec. 23 &	6	18
	Dec. 26–Jan. 29	6	18
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	5	10
Canada Geese	Sept. 1–Sept. 30 &	5	15
	Nov. 16–Dec. 2 &	3	9
	Dec. 4–Jan. 29	3	9
White-fronted Geese	Nov. 16–Dec. 2 &	2	4
	Dec. 4–Jan. 29	2	4
Brant	Closed	—	—
Light Geese	Same as for White-fronted Geese	20	—
Illinois			
Ducks:		6	18
North Zone	Oct. 15–Dec. 13		
Central Zone	Oct. 22–Dec. 20		
South Central Zone	Nov. 11–Jan. 9		
South Zone	Nov. 24–Jan. 22		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
North Zone	Sept. 1–Sept. 15 &	5	15
	Oct. 15–Jan. 12	2	6
Central Zone	Sept. 1–Sept. 15 &	5	15
	Oct. 22–Oct. 30 &	2	6
	Nov. 12–Jan. 31	2	6

	Season dates	Limits	
		Bag	Possession
South Central Zone	Sept. 1–Sept. 15 &	2	6
	Nov. 11–Jan. 31	2	6
South Zone	Sept. 1–Sept. 15 &	2	6
	Nov. 24–Jan. 31	2	6
White-fronted Geese:			
North Zone	Oct. 17–Jan. 12	2	6
Central Zone	Nov. 5–Jan. 31	2	6
South Central Zone	Nov. 11–Jan. 31	2	6
South Zone	Nov. 24–Jan. 31	2	6
Light Geese:			
North Zone	Oct. 15–Jan. 12	20	—
Central Zone	Oct. 22–Jan. 31	20	—
South Central Zone	Nov. 11–Jan. 31	20	—
South Zone	Nov. 24–Jan. 31	20	—
Brant	Same as for Light Geese	1	3
Indiana			
Ducks:		6	18
North Zone	Oct. 22–Dec. 11 &		
	Dec. 24–Jan. 1		
Central Zone	Oct. 29–Nov. 6 &		
	Nov. 19–Jan. 8		
South Zone	Oct. 29–Nov. 6 &		
	Nov. 26–Jan. 15.		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Dark Geese (1)(3):			
North Zone	Sept. 3–Sept. 11 &	5	15
	Oct. 22–Nov. 20 &	5	15
	Dec. 10–Feb. 12	5	15
Central Zone	Sept. 3–Sept. 11 &	5	15
	Oct. 29–Nov. 6 &	5	15
	Nov. 19–Feb. 12	5	15
South Zone	Sept. 3–Sept. 18 & Oct. 29–Nov. 6 & Nov. 26–Feb. 12.	5	15
		5	15
		5	15
Light Geese:			
North Zone	Same as for Dark Geese	20	—
Central Zone	Same as for Dark Geese	20	—
South Zone	Same as for Dark Geese	20	—
Iowa			
Ducks:		6	18
North Zone	Sept. 24–Oct. 2 &		
	Oct. 15–Dec. 4		
Missouri River Zone	Oct. 8–Oct. 9 &		
	Oct. 22–Dec 18		
South Zone	Oct. 1–Oct. 5 &		
	Oct. 22–Dec 15		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Dark Geese (1):			
Cedar Falls/Waterloo	Sept. 3–Sept. 11	5	15
Des Moines	Sept. 3–Sept. 11	5	15
Cedar Rapids/Iowa City	Sept. 3–Sept. 11	5	15
North Zone (4)	Sept. 24–Oct. 9 &	5	15
	Oct. 15–Oct. 31 &	5	15
	Nov. 1–Jan. 4	5	15
Missouri River Zone (4)	Oct. 8–Oct. 16 &	5	15
	Oct. 22–Oct. 31 &	5	15
	Nov. 1–Jan. 18	5	15
South Zone (4)	Oct. 1–Oct. 9 &	5	15
	Oct. 22–Oct. 31 &	5	15
	Nov. 1–Jan. 18	5	15
Light Geese:			
North Zone	Sept. 24–Oct. 9 &	20	—
	Oct. 15–Jan. 13	20	—
Missouri River Zone	Oct. 8–Oct. 16 &	20	—
	Oct. 22–Jan. 27	20	—
South Zone	Oct. 1–Oct. 9 &	20	—
	Oct. 22–Jan. 27	20	—
Kentucky			
Ducks:		6	18

	Season dates	Limits	
		Bag	Possession
West Zone	Nov. 24–Nov. 27 &		
	Dec. 5–Jan. 29		
East Zone	Same as West Zone		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese	Sept. 16–Sept. 30 &	5	15
	Nov. 24–Feb. 15	3	9
White-fronted Geese	Nov. 24–Feb. 15	2	6
Brant	Nov. 24–Feb. 15	1	3
Light Geese	Nov. 24–Feb. 15	20	60
Louisiana			
Ducks:		6	18
West Zone	Nov. 12–Dec. 4 &		
	Dec. 17–Jan. 22		
East Zone (including Catahoula Lake)	Nov. 19–Dec. 4 &		
	Dec. 17–Jan. 29		
Coastal Zone	Nov. 12–Dec. 4 &		
	Dec. 17–Jan. 22		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese	Nov. 5–Dec. 4 &	3	9
	Dec. 17–Jan. 31	3	9
White-fronted Geese	Nov. 5–Dec. 4 &	2	6
	Dec. 17–Feb. 12	2	6
Brant	Closed	—	—
Light Geese	Same as for White-fronted Geese	20	—
Michigan			
Ducks:		6	18
North Zone	Sept. 24–Nov. 20 &		
	Nov. 26–Nov. 27		
Middle Zone	Oct. 1–Nov. 27 &		
	Dec. 17–Dec. 18		
South Zone	Oct. 8–Dec. 4 &		
	Dec. 31–Jan. 1		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
North Zone	Sept. 1–Sept. 30 &	5	15
	Oct. 1–Dec. 16	3	9
Middle Zone	Sept. 1–Sept. 30 &	5	15
	Oct. 1–Dec. 14 &	3	9
	Dec. 17–Dec. 18	3	9
South Zone:.			
Muskegon Wastewater GMU	Oct. 15–Nov. 12 &	3	9
	Dec. 3–Dec. 20	3	9
Allegan County GMU	Sept. 1–Sept. 7 &	5	15
	Nov. 5–Dec. 23 &	3	9
	Dec. 26–Feb. 12	3	9
Saginaw County GMU	Sept. 1–Sept. 25 &	5	15
	Oct. 8–Dec. 4 &	3	9
	Dec. 31–Jan. 1 &	3	9
	Jan. 21–Feb. 11	3	9
Tuscola/Huron GMU	Sept. 1–Sept. 25 &	5	15
	Oct. 8–Dec. 4 &	3	9
	Dec. 31–Jan. 1 &	3	9
	Jan. 21–Feb. 11	3	9
Remainder of South Zone	Sept. 1–Sept. 25 &	5	15
	Oct. 8–Dec. 4 &	3	9
	Dec. 31–Jan. 1 &	3	9
	Jan. 21–Feb. 11	3	9
White-fronted Geese:			
North Zone	Same as for Canada Geese	1	3
Middle Zone	Same as for Canada Geese	1	3
South Zone:.			
Muskegon Wastewater GMU	Same as for Canada Geese	1	3
Allegan County GMU	Same as for Canada Geese	1	3
Saginaw County GMU	Sept. 1–Sept. 25 &	1	3
	Oct. 8–Dec. 4 &	1	3
	Dec. 31–Jan. 1	1	3
Tuscola/Huron GMU	Sept. 1–Sept. 25 &	1	3
	Oct. 8–Dec. 4 &	1	3
	Dec. 31–Jan. 1	1	3

	Season dates	Limits	
		Bag	Possession
Remainder of South Zone	Sept. 1–Sept. 25 &	1	3
	Oct. 8–Dec. 4 &	1	3
	Dec. 31–Jan. 1	1	3
Light Geese:			
North Zone	Same as for Canada Geese	20	—
Middle Zone	Same as for Canada Geese	20	—
South Zone:.			
Muskegon Wastewater GMU	Same as for Canada Geese	20	—
Allegan County GMU	Same as for Canada Geese	20	—
Saginaw County GMU	Same as for White-fronted Geese	20	—
Tuscola/Huron GMU	Same as for White-fronted Geese	20	—
Remainder of South Zone	Sept. 1–Sept. 25 &	20	—
	Oct. 8–Dec. 4 &	20	—
	Dec. 31–Jan. 1	20	—
Brant:			
North Zone	Same as for White-fronted Geese	1	3
Middle Zone	Same as for White-fronted Geese	1	3
South Zone	Same as for White-fronted Geese	1	3
Minnesota			
Ducks:		6	18
North Zone	Sept. 24–Nov. 22		
Central Zone	Sept. 24–Oct. 2 &		
	Oct. 8–Nov. 27		
South Zone	Sept. 24–Oct. 2 &		
	Oct. 15–Dec. 4		
Mergansers	Same as for Ducks	5	15
Coots (5)	Same as for Ducks	15	45
Dark Geese (1):			
North Zone (6)	Sept. 3–Sept. 18 &	5	15
	Sept. 24–Dec. 23	5	15
Central Zone (6)	Sept. 3–Sept. 18 &	5	15
	Sept. 24–Oct. 2 &	5	15
	Oct. 8–Dec. 28	5	15
South Zone (6)	Sept. 3–Sept. 18 &	5	15
	Sept. 24–Oct. 2 &	5	15
	Oct. 15–Jan. 4	5	15
Light Geese:			
North Zone	Same as for Dark Geese	20	60
Central Zone	Same as for Dark Geese	20	60
South Zone	Same as for Dark Geese	20	60
Mississippi			
Ducks	Nov. 25–Nov. 27 &	6	18
	Dec. 2–Dec. 4 &	6	18
	Dec. 7–Jan. 29	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese	Sept. 1–Sept 30 &	5	15
	Nov. 12–Nov. 27 &	3	9
	Dec. 15–Jan. 29 &	3	9
	Feb. 4–Feb. 15	3	9
White-fronted Geese	Nov. 12–Nov. 27 &	3	9
	Dec. 15–Jan. 29 &	3	9
	Feb. 4–Feb. 15	3	9
Brant	Same as for White-fronted Geese	1	3
Light Geese	Same as for White-fronted Geese	20	–
Missouri			
Ducks and Mergansers:		6	18
North Zone	Oct. 29–Dec. 27		
Middle Zone	Nov. 5–Jan. 3		
South Zone	Nov. 24–Jan. 22		
Coots	Same as for Ducks	15	45
Canada Geese and Brant:			
North Zone	Oct. 1–Oct. 9 &	3	9
	Nov. 11–Feb. 6	3	9
Middle Zone	Same as North Zone	3	9
South Zone	Same as North Zone	3	9
White-fronted Geese:			
North Zone	Nov. 11–Feb. 6	2	6
Middle Zone	Same as North Zone	2	6
South Zone	Same as North Zone	2	6
Light Geese:			
North Zone	Nov. 11–Feb. 6	20	—

	Season dates	Limits	
		Bag	Possession
Middle Zone	Same as North Zone	20	—
South Zone	Same as North Zone	20	—
Ohio			
Ducks (7):		6	18
Lake Erie Marsh Zone	Oct. 15–Oct. 30 &		
	Nov. 12–Dec. 25		
North Zone	Oct. 22–Nov. 6 &		
	Nov. 19–Jan. 1		
South Zone	Oct. 22–Nov. 6 &		
	Dec. 17–Jan. 29		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Dark Geese (1)(8):			
Lake Erie Goose Zone	Sept. 3–Sept. 11 &	5	15
	Oct. 15–Oct. 30 &	3	9
	Nov. 12–Dec. 25 &	3	9
	Jan. 7–Feb. 11	3	9
North Zone	Sept. 3–Sept. 11 &	5	15
	Oct. 22–Nov. 6 &	3	9
	Nov. 19–Jan. 1 &	3	9
	Jan. 7–Feb. 11	3	9
Pymatuning	Sept. 3–Sept. 11 &	3	9
	Oct. 22–Nov. 6 &	3	9
	Nov. 19–Jan. 1 &	3	9
	Jan. 7–Jan. 30	3	9
South Zone	Sept. 3–Sept. 11 &	3	9
	Oct. 22–Nov. 6 &	3	9
	Nov. 24–Feb. 11	3	9
Light Geese:			
Lake Erie Goose Zone	Oct. 15–Oct. 30 &	10	30
	Nov. 12–Dec. 25 &	10	30
	Jan. 7–Feb. 11	10	30
North Zone	Oct. 22–Nov. 6 &	10	30
	Nov. 19–Jan. 1 &	10	30
	Jan. 7–Feb. 11	10	30
Pymatuning	Oct. 22–Nov. 6 &	10	30
	Nov. 19–Jan. 1 &	10	30
	Jan. 7–Jan. 30	10	30
South Zone	Oct. 22–Nov. 6 &	10	30
	Nov. 24–Feb. 11	10	30
Tennessee			
Ducks:		6	18
Reelfoot Zone	Nov. 12–Nov. 13 &		
	Dec. 3–Jan. 29		
Rest of State	Nov. 26–Nov. 27 &		
	Dec. 3–Jan. 29		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
Northwest Zone	Oct. 8–Oct. 12 &	5	15
	Nov. 12–Nov. 13 &	5	15
	Dec. 3–Feb. 11	5	15
Rest of State	Oct. 8–Oct. 25 &	5	15
	Nov. 26–Nov. 27 &	5	15
	Dec. 3–Jan. 29	5	15
White-fronted Geese:			
Northwest Zone	Nov. 26–Nov. 27 &	2	6
	Dec. 3–Feb. 11	2	6
Rest of State	Same as Northwest Zone	2	6
Brant:			
Northwest Zone	Nov. 26–Nov. 27 &	2	6
	Dec. 3–Jan. 29	2	6
Rest of State	Same as Northwest Zone	2	6
Light Geese	Same as White-fronted Geese	20	—
Wisconsin			
Ducks (7):		6	18
North Zone	Sept. 24–Nov. 22		
South Zone	Oct. 1–Oct. 9 &		
	Oct. 15–Dec. 4		
Mississippi River Zone	Oct. 1–Oct. 7 &		
	Oct. 15–Dec. 6		
Mergansers	Same as for Ducks	5	15

	Season dates	Limits	
		Bag	Possession
Coots	Same as for Ducks	15	45
Canada Geese:			
North Zone (9)	Sept. 1–Sept. 15	5	15
	Sept. 16–Dec. 16	2	6
South Zone (9)	Sept. 1–Sept. 15	5	15
	Sept. 16–Oct. 9 &	2	6
	Oct. 15–Dec. 21	2	6
Horicon Zone (9)(10)	Sept. 1–Sept. 15	5	15
	Sept. 16–Dec. 16	2	6
Mississippi River Zone (9)	Sept. 1–Sept. 15	5	15
	Oct. 1–Oct. 7 &	2	6
	Oct. 15–Jan. 5	2	6
White-fronted Geese:			
North Zone	Sept. 16–Dec. 16	2	6
South Zone	Sept. 16–Oct. 9 &	2	6
	Oct. 15–Dec. 21	2	6
Horicon Zone	Sept. 16–Dec. 16	1	3
Mississippi River Zone	Oct. 1–Oct. 7 &	2	6
	Oct. 15–Jan. 5	2	6
Brant	Same as for White-fronted Geese	1	3
Light Geese	Same as for White-fronted Geese	20	—

(1) The dark goose daily bag limit is an aggregate daily bag limit for Canada geese, white-fronted geese, and brant.

(2) In *Alabama*, the dark goose daily bag limit may not include more than 1 brant. Additionally, after September 30, the daily bag may not include more than 3 Canada geese.

(3) In *Indiana*, the dark goose daily bag limit of 5 may include 5 Canada geese during September 3 through September 11 in the North and Central Zones and during September 3 through September 18 in the South Zone. During all other open season segments, the dark goose daily bag limit may not include more than 3 Canada geese. The possession limit is three times the daily bag limit.

(4) In *Iowa*, in the North Zone, the Missouri River Zone, and the South Zone, the dark goose daily bag limit may not include more than 2 Canada geese until November 1. After such time, the daily bag limit may not include more than 3 Canada geese. The possession limit is three times the daily bag limit.

(5) In *Minnesota*, the daily bag limit is 15 and the possession limit is 45 coots and moorhens in the aggregate.

(6) In *Minnesota*, the dark goose daily bag limit may not include more than 1 brant. Additionally, after September 18, the daily bag may not include more than 3 Canada geese.

(7) In *Ohio* and *Wisconsin*, the daily bag limit may include no more than one female mallard.

(8) In *Ohio*, only Canada geese may be taken during the September 3 to September 11 portion of the dark goose season.

(9) In *Wisconsin*, a special Early Canada goose season permit is required for September 1 through 15.

(10) In *Wisconsin*, a state tag is required for Canada goose harvest. See State regulations for further information.

CENTRAL FLYWAY

Flyway-Wide Restrictions

Duck Limits: The daily bag limit is 6 ducks, which may include no more than 5 mallards (2 female mallards), 1 mottled duck, 2 pintails, 2 canvasbacks, 2 redheads, 3 scaup, and 3 wood ducks. The possession limit is three times the daily bag limit.

Merganser Limits: The daily bag limit is 5 mergansers and may include no more than 2 hooded mergansers. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, of which only 2 may be hooded mergansers. The possession limit is three times the daily bag limit.

	Season dates	Limits	
		Bag	Possession
Colorado			
Ducks:		6	18
Southeast Zone	Oct. 26–Jan. 29.		
Northeast Zone:	Oct. 8–Nov. 28 & Dec. 17–Jan. 29.		
Mountain/Foothills Zone:	Oct. 1–Nov. 28 & Dec. 24–Jan. 29.		
Coots	Same as for Ducks	15	45
Mergansers	Same as for Ducks	5	15
Dark Geese:			
Northern Front Range Unit	Oct. 1–Oct. 19 &	5	15
	Nov. 19–Feb. 12	5	15
South Park/San Luis Valley Unit	Same as N. Front Range Unit	5	15
North Park Unit	Same as N. Front Range Unit	5	15
Rest of State in Central Flyway	Oct. 31–Feb. 12	5	15
Light Geese:			
Northern Front Range Unit	Oct. 29–Feb. 12	50	
South Park/San Luis Valley Unit	Same as N. Front Range Unit	50	
North Park Unit	Same as N. Front Range Unit	50	
Rest of State in Central Flyway	Same as N. Front Range Unit	50	
Kansas			

	Season dates	Limits	
		Bag	Possession
Ducks:		6	18
High Plains	Oct. 8–Jan. 1 & Jan. 20–Jan. 29.		
Low Plains:.			
Early Zone	Oct. 8–Dec. 4 & Dec. 17–Jan. 1.		
Late Zone	Oct. 29–Jan. 1 & Jan. 21–Jan. 29.		
Southeast Zone	Nov. 12–Jan. 1 & Jan. 7–Jan. 29.		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Dark Geese (1)	Oct. 29–Jan. 1 &	6	18
	Jan. 4–Feb. 12	6	18
White-fronted Geese	Oct. 29–Jan. 1 &	2	6
	Jan. 21–Feb. 12	2	6
Light Geese	Oct. 29–Jan. 1 &	50	
	Jan. 4–Feb. 12	50	
Montana			
Ducks and Mergansers (2):		6	18
Zone 1	Oct. 1–Jan. 5.		
Zone 2	Oct. 1–Oct. 9 & Oct. 22–Jan. 17.		
Coots	Same as for Ducks	15	45
Dark Geese:			
Zone 1	Oct. 1–Jan. 8 &	5	15
	Jan. 14–Jan. 18	5	15
Zone 2	Oct. 1–Oct. 9 &	5	15
	Oct. 22–Jan. 25	5	15
Light Geese:			
Zone 1	Same as for Dark Geese	20	60
Zone 2	Same as for Dark Geese	20	60
Nebraska			
Ducks:		6	18
Zone 1	Oct. 15–Dec. 27..		
Zone 2:			
Low Plains	Oct. 8–Dec. 20.		
High Plains	Oct. 8–Dec. 20 & Jan. 9–Jan. 29.		
Zone 3:			
Low Plains	Oct. 27–Jan. 8.		
High Plains	Oct. 27–Jan. 8 & Jan. 9–Jan. 29.		
Zone 4	Oct. 8–Dec. 20.		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
Niobrara Unit	Oct. 31–Feb. 12	5	15
East Unit	Oct. 31–Feb. 12	5	15
North Central Unit	Oct. 8–Jan. 20	5	15
Platte River Unit	Oct. 31–Feb. 12	5	15
Panhandle Unit	Oct. 31–Feb. 12	5	15
White-fronted Geese	Oct. 8–Dec. 11 &	3	9
	Feb. 4–Feb. 12	3	9
Light Geese	Oct. 8–Jan. 1 &	50	
	Jan. 25–Feb. 12	50	
New Mexico			
Ducks and Mergansers (3):		6	18
North Zone	Oct. 15–Jan. 18.		
South Zone	Oct. 26–Jan. 29.		
Coots	Same as for Ducks	15	45
Dark Geese (4):			
Middle Rio Grande Valley Unit (4)	Dec. 24–Jan. 17	2	2
Rest of State	Oct. 15–Jan. 29	5	15
Light Geese	Oct. 15–Jan. 29	50	
North Dakota			
Ducks (2):		6	18
High Plains	Sept. 24–Dec. 4 & Dec. 10–Jan. 1.		
Remainder of State	Sept. 24–Dec. 4.		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45

	Season dates	Limits	
		Bag	Possession
Canada Geese (5):.			
Missouri River Zone	Sept. 24–Dec. 30	5	15
Rest of State	Sept. 24–Dec. 22	8	24
White-fronted Geese	Sept. 24–Dec. 4	3	9
Light Geese	Sept. 24–Jan. 1	50	
Oklahoma			
Ducks:		6	18
High Plains	Oct. 15–Jan. 11.		
Low Plains:			
Zone 1:	Oct. 29–Nov. 27 & Dec. 10–Jan. 22.		
Zone 2:	Nov. 5–Nov. 27 & Dec. 10–Jan. 29.		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese	Oct. 29–Nov. 27 &	8	24
	Dec. 10–Feb. 12	8	24
White-fronted Geese	Oct. 29–Nov. 27 &	2	6
	Dec. 10–Feb. 5	2	6
Light Geese	Oct. 29–Nov. 27 &	50	
	Dec. 10–Feb. 12	50	
South Dakota			
Ducks (2):		6	18
High Plains	Oct. 8–Dec. 20 & Dec. 21–Jan. 12.		
Low Plains:			
North Zone	Sept. 24–Dec. 6.		
Middle Zone	Sept. 24–Dec. 6.		
South Zone	Oct. 8–Dec. 20.		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:.			
Unit 1	Oct. 1–Dec. 18	8	24
Unit 2	Oct. 31–Feb. 12	4	12
Unit 3	Oct. 15–Dec. 18 &	4	12
	Jan. 14–Jan. 22	4	12
White-fronted Geese	Sept. 24–Dec. 18	2	6
Light Geese	Sept. 24–Dec. 18	50	
Texas			
Ducks (6):		6	18
High Plains	Oct. 29–Oct. 30 & Nov. 4–Jan. 29.		
Low Plains:			
North Zone	Nov. 12–Nov. 27 & Dec. 3–Jan. 29.		
South Zone	Nov. 5–Nov. 27 & Dec. 10–Jan. 29.		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Dark Geese (7):			
East Tier:			
South Zone	Nov. 5–Jan. 29	5	15
North Zone	Nov. 5–Jan. 29	5	15
West Tier	Nov. 5–Feb. 5	5	15
Light Geese:			
East Tier:			
South Zone	Nov. 5–Jan. 29	20	
North Zone	Nov. 5–Jan. 29	20	
West Tier	Nov. 5–Feb. 5	20	
Wyoming			
Ducks (2)(8):		6	18
Zone C1	Oct. 1–Oct. 18 & Oct. 29–Jan. 15.		
Zone C2	Sept. 24–Dec. 4 & Dec. 10–Jan. 3.		
Zone C3	Same as Zone C2.		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Dark Geese:			
Zone G1A (8)	Oct. 1–Oct. 18 &	2	6
	Nov. 18–Feb. 12	4	12

	Season dates	Limits	
		Bag	Possession
Zone G1	Oct. 1–Oct. 18 &	5	15
	Oct. 29–Nov. 27 &	5	15
	Dec. 3–Jan. 28	5	15
Zone G2	Sept. 24–Dec. 4 &	5	15
	Dec. 10–Jan. 11	5	15
Zone G3	Same as Zone G2	5	15
Light Geese	Oct. 1–Dec. 29 &	10	30
	Jan. 29–Feb. 12	10	30

(1) In *Kansas,* the dark geese daily bag limit includes Canada geese, brant, and all other geese except white-fronted geese and light geese.

(2) In *Montana,* during the first 9 days of the duck season, and in *North Dakota, South Dakota,* and *Wyoming,* during the first 16 days of the duck season, the daily bag and possession limit may include 2 and 6 additional blue-winged teal, respectively.

(3) In *New Mexico,* Mexican-like ducks are included in the aggregate with mallards.

(4) In *New Mexico,* the season for dark geese is closed in Bernalillo, Sandoval, Sierra, and Valencia Counties. In the Middle Rio Grande Valley Unit, a limited season is established. See State regulations for additional information.

(5) In *North Dakota,* see State regulations for additional shooting hour restrictions.

(6) In *Texas,* the daily bag limit is 6 ducks, which may include no more than 5 mallards (only 2 of which may be females), 2 redheads, 3 wood ducks, 3 scaup, 2 canvasbacks, 2 pintails, and 1 dusky duck (mottled duck, Mexican-like duck, black duck and their hybrids). The season for dusky ducks is closed the first 5 days of the season in all zones. The possession limit is three times the daily bag limit.

(7) In *Texas,* the daily bag limit for dark geese is 5 in the aggregate and may include no more than 2 white-fronted geese. Possession limits are three times the daily bag limits.

(8) See State regulations for additional restrictions.

Pacific Flyway

Flyway-Wide Restrictions

Duck and Merganser Limits: The daily bag limit of 7 ducks (including mergansers) may include no more than 2 female mallards, 2 pintails, 2 redheads, 3 scaup, and 2 canvasbacks. The possession limit is three times the daily bag limit.

Coot and Common Moorhen Limits: Daily bag and possession limits are in the aggregate for the two species.

	Season dates	Limits	
		Bag	Possession
Arizona			
Ducks (1):		7	21
North Zone:			
Scaup	Oct. 22–Jan. 15	3	9
Other Ducks	Oct. 7–Jan. 15	7	21
South Zone:			
Scaup	Nov. 5–Jan. 29	3	9
Other Ducks	Oct. 21–Jan. 29	7	21
Coots and Moorhens	Same as for Other Ducks	25	75
Dark Geese:			
North Zone	Oct. 7–Jan. 15	4	12
South Zone	Oct. 21–Jan. 29	4	12
Light Geese	Same as for Dark geese	10	30
California			
Ducks:		7	21
Northeastern Zone:			
Scaup	Oct. 8–Dec. 4 &	3	9
	Dec. 24–Jan. 20	3	9
Other Ducks	Oct. 8–Jan. 20	7	21
Colorado River Zone:			
Scaup	Nov. 5–Jan. 29	3	9
Other Ducks	Oct. 21–Jan. 29	7	21
Southern Zone:			
Scaup	Nov. 5–Jan. 29	3	9
Other Ducks	Oct. 22–Jan. 29	7	21
Southern San Joaquin Valley Zone:			
Scaup	Nov. 5–Jan. 29	3	9
Other Ducks	Oct. 22–Jan. 29	7	21
Balance of State Zone:			
Scaup	Nov. 5–Jan. 29	3	9
Other Ducks	Oct. 22–Jan. 29	7	21
Coots and Moorhens	Same as for Other Ducks	25	25
Canada Geese (2) (3):			
Northeastern Zone (4)	Oct. 8–Jan. 15	10	30
Colorado River Zone	Oct. 21–Jan. 29	4	12
Southern Zone	Oct. 22–Jan. 29	3	9
Balance of State Zone	Oct. 1–Oct. 5 &	10	30
	Oct. 22–Jan. 29	10	30

	Season dates	Limits	
		Bag	Possession
North Coast Special Management Area	Nov. 7–Jan. 29 &	10	30
	Feb. 18–Mar. 10	10	30
White-fronted Geese (2):			
Northeastern Zone	Oct. 8–Jan. 15 &	10	30
	Mar. 4–Mar.8	10	30
Colorado River Zone	Oct. 21–Jan. 29	4	12
Southern Zone	Oct. 22–Jan. 29	3	9
Balance of State Zone	Oct. 22–Jan. 29 &	10	30
	Feb. 11–Feb. 15	10	30
Sacramento Valley Special Management Area	Oct. 22–Dec. 21	3	9
Light Geese:			
Northeastern Zone	Oct. 8–Dec. 4 &	15	45
	Jan. 7–Jan. 20 &	15	45
	Feb. 6–Mar.10	15	45
Colorado River Zone	Oct. 21–Jan. 29	10	30
Southern Zone	Oct. 22–Jan. 29	15	45
Imperial County Special Management Area	Nov. 5–Jan. 29 &	15	45
	Feb. 4–Feb. 20	15	45
Balance of State Zone	Oct. 22–Jan. 29 &	15	45
	Feb. 11–Feb. 15	15	45
Brant:			
Northern Zone	Nov. 8–Dec. 14	2	6
Balance of State Zone	Nov. 9–Dec. 15	2	6
Colorado			
Ducks:		7	21
East Zone:			
Scaup	Oct. 1–Dec. 25	3	9
Other Ducks	Oct. 1–Jan. 13	7	21
West Zone:			
Scaup	Oct. 1–Oct. 19 &	3	9
	Nov. 5–Jan. 10	3	9
Other Ducks	Oct. 1–Oct. 19 &	7	21
	Nov. 5–Jan. 29	7	21
Coots	Same as for Other Ducks	25	75
Dark Geese:			
East Zone	Oct. 1–Jan. 4	4	12
West Zone	Oct. 1–Oct. 10 &	4	12
	Nov. 5–Jan. 29	4	12
Light Geese:	Same as for Canada Geese	10	30
Idaho			
Ducks:		7	21
Zone 1:			
Scaup	Oct. 22–Jan. 13	3	9
Other Ducks	Oct. 1–Jan. 13	7	21
Zone 2:			
Scaup	Oct. 22–Jan. 13	3	9
Other Ducks	Oct. 1–Jan. 13	7	21
Zone 3:			
Scaup	Nov. 5–Jan. 27	3	9
Other Ducks	Oct. 15–Jan. 27	7	21
Coots	Same as for Other Ducks	25	75
Canada Geese and Brant:			
Zone 1	Oct. 1–Jan. 13	4	12
Zone 2	Oct. 1–Jan. 13	4	12
Zone 3	Oct. 15–Jan. 27	4	12
Zone 4	Oct. 1–Dec. 29	4	12
White-fronted Geese:			
Zone 1	Oct. 1–Jan. 13	10	30
Zone 2	Oct. 1–Jan. 13	10	30
Zone 3	Nov. 7–Feb. 19	10	30
Light Geese:			
Zone 1	Oct. 1–Jan. 13	20	60
Zone 2	Oct. 29–Jan. 13 &	20	60
	Feb. 11–Mar. 10	20	60
Zone 3	Nov. 26–Mar. 10	20	60
Zone 4 (5)	Oct. 1–Jan. 13	20	60
Montana			
Ducks:		7	21
Scaup	Oct. 1–Dec. 25	3	9
Other Ducks	Oct. 1–Jan. 8 &	7	21
	Jan. 14–Jan. 18	7	21
Coots	Same as for Other Ducks	25	25

	Season dates	Limits	
		Bag	Possession
Dark Geese (6)	Oct. 1–Jan. 8 &	4	12
	Jan. 14–Jan. 18	4	12
Light Geese (6)	Same as for Dark Geese	20	60
Nevada			
Ducks:		7	21
Northeast Zone:			
Scaup	Oct. 1–Oct. 23 &	3	9
	Oct. 26–Dec. 27	3	9
Other Ducks	Oct. 1–Oct. 23 &	7	21
	Oct. 26–Jan. 15	7	21
Northwest Zone:			
Scaup	Oct. 29–Jan. 22	3	9
Other Ducks	Oct. 8–Oct. 23 &	7	21
	Oct. 26–Jan. 22	7	21
South Zone:			
Scaup	Nov. 5–Jan. 29	3	9
Other Ducks	Oct. 15–Oct. 23 &	7	21
	Oct. 26–Jan. 29	7	21
Moapa Valley Special Management Area (7):			
Scaup	Nov. 5–Jan. 29	3	9
Other Ducks	Oct. 29–Jan. 29	7	21
Coots and Moorhens	Same as for Other Ducks	25	75
Canada Geese and Brant:			
Northeast Zone	Same as for Other Ducks	4	12
Northwest Zone	Same as for Other Ducks	4	12
South Zone	Same as for Other Ducks	4	12
Moapa Valley Special Management Area (7):	Same as for Other Ducks	4	12
White-fronted Geese:			
Northeast Zone	Same as for Canada Geese	10	30
Northwest Zone	Same as for Canada Geese	10	30
South Zone	Same as for Canada Geese	10	30
Moapa Valley Special Management Area (7):	Same as for Canada Geese	10	30
Light Geese (8):			
Northeast Zone	Oct. 26–Jan. 15 &	20	60
	Feb. 25–Mar. 10	20	60
Northwest Zone	Oct. 26–Jan. 22 &	20	60
	Feb. 25–Mar. 10	20	60
South Zone	Oct. 15–Oct. 23 &	20	60
	Oct. 26–Jan. 29	20	60
Moapa Valley Special Management Area (7):	Oct. 29–Jan. 29	20	60
New Mexico			
Ducks:		7	21
Scaup	Oct. 17–Jan. 10	3	9
Other Ducks	Oct. 17–Jan. 29	7	21
Coots and Moorhens	Same as for Other Ducks	25	75
Canada Geese and Brant:			
North Zone	Sept. 24–Oct. 9 &	3	9
	Oct. 31–Jan. 29	3	9
South Zone	Oct. 15–Jan. 29	3	9
White-fronted Geese:			
North Zone	Same as for Canada Geese	10	30
South Zone	Same as for Canada Geese	10	30
Light Geese:			
North Zone	Same as for Canada Geese	20	60
South Zone	Same as for Canada Geese	20	60
Oregon			
Ducks:		7	21
Zone 1:			
Columbia Basin Unit:			
Scaup	Nov. 5–Jan. 29	3	9
Other Ducks	Oct. 15–Oct. 30 &	7	21
	Nov. 2–Jan. 29	7	21
Rest of Zone 1	Same as Columbia Basin Unit.		
Zone 2:			
Scaup	Oct. 8–Nov. 27 &	3	9
	Nov. 30–Jan. 3	3	9
Other Ducks	Oct. 8–Nov. 27 &	7	21
	Nov. 30–Jan. 22	7	21
Coots	Same as for Other Ducks	25	75
Canada Geese:			
Northwest Permit Zone (9) (10)	Oct. 22–Oct. 30 &	4	12
	Nov. 19–Jan. 9 &	4	12
	Feb. 4–Mar. 10	4	12

	Season dates	Limits	
		Bag	Possession
Tillamook County Management Area	Closed.		
Southwest Zone	Oct. 15–Oct. 30 &	4	12
	Nov. 7–Jan. 29	4	12
South Coast Zone	Oct. 1–Nov. 27 &	6	18
	Dec. 17–Jan. 11 &	6	18
	Feb. 18–Mar. 10	6	18
Eastern Zone	Oct. 15–Oct. 30 &	4	12
	Nov. 7–Jan. 29	4	12
Klamath County Zone	Oct. 8–Nov. 27 &	4	12
	Dec. 12–Jan. 29	4	12
Harney and Lake County Zone	Oct. 8–Nov. 27 &	4	12
	Dec. 12–Jan. 29	4	12
Malheur County Zone	Oct. 8–Nov. 27 &	4	12
	Dec. 12–Jan. 29	4	12
White-fronted Geese:			
Northwest Permit Zone (9)	Same as for Canada Geese	10	30
Tillamook County Management Area	Closed.		
Southwest Zone	Same as for Canada Geese	10	30
South Coast Zone	Same as for Canada Geese	10	30
Eastern Zone	Same as for Canada Geese	10	30
Klamath County Zone	Oct. 8–Nov. 27 &	10	30
	Jan. 16–Mar. 10	10	30
Harney and Lake County Zone (11)	Oct. 8–Nov. 27 &	10	30
	Jan. 16–Mar. 10	10	30
Malheur County Zone	Oct. 8–Nov. 27 &	10	30
	Jan. 16–Mar. 10	10	30
Light Geese:			
Northwest Permit Zone (9)	Same as for Canada Geese	6	18
Tillamook County Management Area	Closed.		
Southwest Zone	Same as for Canada Geese	6	18
South Coast Zone	Same as for Canada Geese	6	18
Eastern Zone	Same as for Canada Geese	6	18
Klamath County Zone (12)	Oct. 8–Nov. 27 &	6	18
	Jan. 16–Mar. 10	6	18
Harney and Lake County Zone (12)	Oct. 8–Nov. 27 &	6	18
	Jan. 16–Mar. 10	6	18
Malheur County Zone (12)	Oct. 8–Nov. 27 &	6	18
	Jan. 16–Mar. 10	6	18
Brant	Nov. 26–Dec. 11	2	6
Utah			
Ducks:		7	21
Zone 1:			
Scaup	Oct. 1–Dec. 25	3	9
Other Ducks	Oct. 1–Jan. 14	7	21
Zone 2:			
Scaup	Same as Zone 1	3	9
Other Ducks	Same as Zone 1	7	21
Coots	Same as for Other Ducks	25	75
Canada Geese and Brant:			
Northern Zone	Oct. 1–Jan. 14	4	12
Wasatch Front Zone	Oct. 1–Oct. 13 &	4	12
	Nov. 5–Feb. 5	4	12
Washington County Zone	Oct. 1–Oct. 13 &	4	12
	Nov. 5–Feb. 5	4	12
Balance of State Zone	Oct. 1–Oct. 13 &	4	12
	Oct. 22–Jan. 22	4	12
White-fronted Geese:			
Northern Zone	Same as for Canada Geese	10	30
Wasatch Front Zone	Same as for Canada Geese	10	30
Washington County Zone	Same as for Canada Geese	10	30
Balance of State Zone	Same as for Canada Geese	10	30
Light Geese:			
Northern Zone	Oct. 25–Nov. 30 &	20	60
	Jan. 1–Mar. 10	20	60
Wasatch Front Zone	Oct. 25–Nov. 30 &	20	60
	Jan. 1–Mar. 10	20	60
Washington County Zone	Same as for Wasatch County Zone	20	60
Balance of State Zone	Same as for Wasatch County Zone	20	60
Washington			
Ducks:		7	21
East Zone:			
Scaup	Nov. 5–Jan. 29	3	9

	Season dates	Limits	
		Bag	Possession
Other Ducks	Oct. 15–Oct 19 &	7	21
	Oct. 22–Jan. 29	7	21
West Zone (13)	Same as East Zone.		
Coots	Same as for Other Ducks	25	75
Canada Geese (14):			
Area 1 (15)	Oct. 15–Oct. 27 &	4	12
	Nov. 5–Jan. 29	4	12
Area 2A (16) (17)	Oct. 15–Oct. 23 &	4	12
	Nov. 26–Jan. 22 &	4	12
	Feb. 11–Mar. 8	4	12
Area 2B (16) (17)	Oct. 15–Oct. 23 &	4	12
	Nov. 26–Jan. 22 &	4	12
	Feb. 11–Mar. 8	4	12
Area 3 (15)	Oct. 15–Oct. 27 &	4	12
	Nov. 5–Jan. 29	4	12
Area 4 (15)	Oct. 15–Oct. 16 &	4	12
	Oct. 19 &	4	12
	Oct. 23–Jan. 29	4	12
Area 5 (15)	Oct. 15–Oct. 17 &	4	12
	Oct. 22–Jan. 29	4	12
White-fronted Geese (14):			
Area 1 (15)	Oct. 15–Jan. 29	4	12
Area 2A (16)	Same as for Canada Geese	4	12
Area 2B (16)	Same as for Canada Geese	4	12
Area 3 (15)	Same as for Canada Geese	4	12
Area 4 (15)	Same as for Canada Geese	4	12
Area 5 (15)	Same as for Canada Geese	4	12
Light Geese (14):			
Area 1 (15)	Oct. 15–Jan. 29	4	12
Area 2A (16)	Same as for Canada Geese	4	12
Area 2B (16)	Same as for Canada Geese	4	12
Area 3 (15)	Same as for Canada Geese	4	12
Area 4 (15)	Same as for Canada Geese	4	12
Area 5 (15)	Same as for Canada Geese	4	12
Brant (18):			
Skagit County	Jan. 7–Jan. 22	2	6
Pacific County	Jan. 7–Jan. 22	2	6
Wyoming			
Ducks:		7	21
Snake River Zone:			
Scaup	Sept. 24–Dec. 18	3	9
Other Ducks	Sept. 24–Jan. 6	7	21
Balance of State Zone			
Scaup	Sept. 24–Dec. 18	3	9
Other Ducks	Sept. 24–Jan. 6	7	21
Coots	Same as for Other Ducks	15	45
Dark Geese	Sept. 24–Dec. 29	3	9
Light Geese	Closed.		

(1) In *Arizona*, the daily bag limit may include no more than either 2 female mallards or 2 Mexican-like ducks, or 1 of each; and not more than 6 female mallards and Mexican-like ducks, in the aggregate, may be in possession.

(2) In *California*, the daily bag and possession limits for Canada geese and white-fronted geese are in the aggregate.

(3) In *California*, small Canada geese are Cackling and Aleutian Canada geese, and large Canada geese are Western and Lesser Canada geese.

(4) In *California*, in the Northeastern Zone, the daily bag limit may include no more than 2 large Canada geese.

(5) In *Idaho*, the season on light geese is closed in Fremont and Teton Counties.

(6) In *Montana*, check State regulations for special seasons and exceptions in Freezeout Lake WMA; Canyon Ferry; Flathead; and Deer Lodge County.

(7) In *Nevada*, youth 17 years of age or younger are allowed to hunt on October 15 on the Moapa Valley portion of Overton Wildlife Management Area. Youth must be accompanied by an adult who is at least 18 years of age.

(8) In *Nevada*, there is no open season on light geese in Ruby Valley within Elko and White Pine Counties. In addition, the season is closed in Kirch WMA, Mason Valley WMA, and Scripps WMA and Washoe State Park from February 25 to March 9.

(9) In *Oregon*, in the Northwest Permit Zone, see State regulations for specific dates, times, and conditions of permit hunts and closures.

(10) In *Oregon*, in the Northwest Permit Zone, the season for Dusky Canada geese is closed.

(11) In *Oregon*, in Lake County, the daily bag and possession limit for white-fronted geese is 1 and 3, respectively.

(12) In *Oregon*, in the Klamath County, the Harney and Lake County, and Malheur County Zones, during January 30 through March 10, the daily bag limit for light geese is 20. The possession limit is three times the daily bag limit.

(13) In *Washington*, the daily bag limit in the West Zone may include no more than 2 scoters, 2 long-tailed ducks, and 2 goldeneyes, with the possession limit three times the daily bag limit. The daily bag and possession limit, and the season limit, for harlequins is 1.

(14) In *Washington*, the daily bag limit is 4 Canada geese, white-fronted geese, or light geese, singly or in the aggregate. Possession limit is three times the daily bag limit.

(15) In *Washington*, in Area 4, hunting is allowed only on Saturdays, Sundays, Wednesdays, and certain holidays. In State Areas 1, 3, and 5, hunting is allowed everyday. See State regulations for details, including shooting hours.

(16) In *Washington*, in Areas 2A and 2B, see State regulations for specific dates, times, and conditions of permit hunts and closures.

(17) In *Washington*, in Areas 2A and 2B, the season for Dusky Canada geese is closed.

(18) In *Washington*, brant may be hunted in Skagit and Pacific Counties only; see State regulations for specific dates.

(f) *Youth Waterfowl Hunting Days.*

The following seasons are open only to youth hunters. Youth hunters must be accompanied into the field by an adult at least 18 years of age. This adult cannot duck hunt but may participate in other open seasons.

Definition

Youth Hunters: States may use their established definition of age for youth hunters. However, youth hunters may not be over the age of 17. Youth hunters 16 years of age and older must possess a Federal Migratory Bird Hunting and Conservation Stamp (also known as Federal Duck Stamp).

		Season dates
ATLANTIC FLYWAY:		
Connecticut	Ducks, geese, mergansers, and coots	Oct. 1 & Nov. 5
Delaware	Ducks, geese, brant, mergansers, and coots	Oct. 22 & Feb. 11
Florida	Ducks, mergansers, coots, moorhens, and geese	Feb. 4 & 5
Georgia	Ducks, geese, mergansers, coots, moorhens, and gallinules	Nov. 12 & 13
Maine	Ducks, geese, mergansers, and coots:	
	North Zone	Sept. 17 & Dec. 10
	South Zone	Sept. 24 & Oct. 22
	Coastal Zone	Sept. 24 & Nov. 5
Maryland (1)(2)	Ducks, coots, light geese, Canada geese, sea ducks, and brant	Nov. 5 & Feb. 11
Massachusetts	Ducks, mergansers, coots, and geese	Sept. 24 & Oct. 8
New Hampshire	Ducks, geese, mergansers, and coots	Sept. 24 & 25
New Jersey	Ducks, geese, mergansers, coots, moorhens, and gallinules:	
	North Zone	Oct. 1 & Feb. 4
	South Zone	Oct. 15 & Feb. 4
	Coastal Zone	Nov. 5 & Feb. 11
New York (3)	Ducks, mergansers, coots, brant, and Canada geese:	
	Long Island Zone	Nov. 12 & 13
	Lake Champlain Zone	Sept. 24 & 25
	Northeastern Zone	Sept. 17 & 18
	Southeastern Zone	Sept. 17 & 18
	Western Zone	Oct. 1 & 2
North Carolina	Ducks, mergansers, geese (4), brant, tundra swans (5), and coots	Feb. 4 & Feb. 11
Pennsylvania	Ducks, mergansers, Canada geese, coots, moorhens, brant, and gallinules:	
	North Zone	Sept. 17 & 24
	South Zone	Sept. 17 & Nov. 5
	Northwest Zone	Sept. 17 & 24
	Lake Erie Zone	Sept. 17 & Oct. 22
Rhode Island	Ducks, mergansers, geese, and coots	Oct. 22 & 23
South Carolina	Ducks, geese, mergansers, and coots	Feb. 4 & 11
Vermont	Ducks, geese, mergansers and coots	Sept. 24 & 25
Virginia	Ducks, mergansers, coots, tundra swans (5), and Canada geese (6)	Oct. 22 & Feb. 4
West Virginia	Ducks, geese, mergansers, coots, and gallinules	Sept. 17 & Nov. 5
MISSISSIPPI FLYWAY:		
Alabama	Ducks, mergansers, coots, geese, moorhens, and gallinules	Nov. 19 & Feb. 4
Arkansas	Ducks, geese, mergansers, coots, moorhens, and gallinules	Dec. 3 & Feb. 4
Illinois	Ducks, geese, mergansers, and coots	
	North Zone	Oct. 8 & 9
	Central Zone	Oct. 15 & 16
	South Central Zone	Nov. 5 & 6
	South Zone	Nov. 12 & 13
Indiana	Ducks, mergansers, coots, moorhens, gallinules, and geese:	
	North Zone	Oct. 15 & 16
	Central Zone	Oct. 22 & 23
	South Zone	Oct. 22 & 23
Iowa	Ducks, geese, mergansers, coots	
	North Zone	Sept. 17 & 18
	Missouri River Zone	Oct. 1 & 2
	South Zone	Sept. 24 & 25
Kentucky	Ducks, geese, mergansers, coots, moorhens, and gallinules:	
	West Zone	Feb. 4 & 5
	East Zone	Nov. 5 & 6
Louisiana	Ducks, mergansers, coots, moorhens, gallinules, and geese:	
	West Zone	Nov. 5 & Jan. 28
	East Zone	Nov. 12 & Feb. 4
	Coastal Zone	Nov. 5 & Nov. 6
Michigan	Ducks, geese, mergansers, coots, moorhens, and gallinules	Sept. 10 & 11
Minnesota	Ducks, geese, mergansers, coots, moorhens, and gallinules	Sept. 10
Mississippi	Ducks, mergansers, coots, moorhens, gallinules, and geese	Nov. 19 & Feb. 4
Missouri	Ducks, coots, mergansers, moorhens, gallinules, and geese:	
	North Zone	Oct. 22 & 23
	Middle Zone	Oct. 29 & 30
	South Zone	Nov. 19 & 20
Ohio	Ducks, mergansers, coots, moorhens, gallinules, and geese:	

		Season dates
	Lake Erie Marsh	Oct. 1 & 2
	North Zone	Oct. 1 & 2
	South Zone	Oct. 1 & 2
Tennessee	Ducks, mergansers, coots, moorhens, gallinules, and geese:	
	Reelfoot Zone	Feb. 4 & 11
	Remainder of State	Feb. 4 & 11
Wisconsin	Ducks, geese, mergansers, coots, moorhens, and gallinules	Sept. 17 & 18
CENTRAL FLYWAY:		
Colorado	Ducks, dark geese, mergansers, and coots:	
	Mountain/Foothills Zone	Sept. 24 & 25
	Northeast Zone	Oct. 1 & 2
	Southeast Zone	Oct. 22 & 23
Kansas (7)	Ducks, geese, mergansers, and coots:	
	High Plains	Oct. 1 & 2
	Low Plains:	
	Early Zone	Oct. 1 & 2
	Late Zone	Oct. 22 & 23
	Southeast Zone	Nov. 12 & 13
Montana	Ducks, geese, mergansers, and coots	Sept. 24 & 25
Nebraska	Ducks, geese, mergansers, and coots:	
	Zone 1	Oct. 8 & 9
	Zone 2	Oct. 1 & 2
	Zone 3	Oct. 22 & 23
	Zone 4	Oct. 1 & 2
New Mexico	Ducks, mergansers, coots, and moorhens:	
	North Zone	Oct. 1 & 2
	South Zone	Oct. 8 & 9
North Dakota	Ducks, geese, mergansers, and coots	Sept. 17 & 18
Oklahoma	Ducks, geese mergansers, and coots:	
	High Plains	Oct. 8 & 9
	Low Plains:	
	Zone 1	Oct. 22 & 23
	Zone 2	Oct. 29 & 30
South Dakota	Ducks, Canada geese, mergansers, and coots	Sept. 17 & 18
Texas	Ducks, geese, mergansers, moorhens, gallinules, and coots:	
	High Plains	Oct. 22 & 23
	Low Plains:	
	North Zone	Nov. 5 & 6
	South Zone	Oct. 29 & 30
Wyoming	Ducks, geese, mergansers, and coots:	
	Zone C1	Sept. 24 & 25
	Zone C2	Sept. 17 & 18
	Zone C3	Sept. 17 & 18
PACIFIC FLYWAY:		
Arizona	Ducks, geese, mergansers, coots, and moorhens:	
	North Zone	Oct. 1 & 2
	South Zone	Feb. 4 & 5
California	Ducks, geese, brant, mergansers, coots, and moorhens:	
	Northeastern Zone	Sept. 24 & 25
	Colorado River Zone	Feb. 4 & 5
	Southern Zone	Feb. 4 & 5
	Southern San Joaquin Valley Zone	Feb. 4 & 5
	Balance of State Zone	Feb. 4 & 5
Colorado	Ducks, geese, mergansers, and coots:	
	East Zone	Sept. 24 & 25
	West Zone	Oct. 29 & 30
Idaho	Ducks, geese, mergansers, and coots:	Sept. 24 & 25
Montana	Ducks, geese, mergansers, and coots	Sept. 24 & 25
Nevada	Ducks, geese, mergansers, coots, and moorhens:	
	Northeast Zone	Sept. 17 & 18
	Northwest Zone	Sept. 24 & Feb. 4
	South Zone	Feb. 11 & 12
New Mexico	Ducks, mergansers, coots, and moorhens	Oct. 8 & 9
Oregon	Ducks, geese, mergansers, and coots	Sept. 24 & 25
Utah	Ducks, dark geese, mergansers, and coots	Sept. 17
Washington	Ducks, Canada geese, mergansers, and coots	Sept. 17 & 18
Wyoming	Ducks, dark geese, mergansers, and coots	Sept. 17 & 18

(1) In *Maryland,* youth hunter(s) must be accompanied by an adult at least 21 years old and who possesses a current Maryland hunting license or is exempt from the hunting license requirement. The adult accompanying the youth hunter(s) may not possess a hunting weapon and may not participate in other seasons that are open on the youth days.

(2) In *Maryland,* the bag limit for Canada geese is 2 in the AP Zone and 5 in the RP Zone.

(3) In *New York,* the daily bag limit for Canada geese is 3.

(4) In *North Carolina,* the daily bag limit in the Northeast Hunt Zone may not include dark geese except by permit.

(5) In *North Carolina* and *Virginia,* the daily bag limit may not include tundra swans except by permit.

(6) In *Virginia,* the daily bag limit for Canada geese is 2.

(7) In *Kansas,* the adult accompanying the youth must possess any licenses and/or stamps required by law for that individual to hunt waterfowl.

■ 7. Section 20.106 is revised to read as follows:

§ 20.106 Seasons, limits, and shooting hours for sandhill cranes.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the March 28, 2016, **Federal Register** (81 FR 17302).

Federally authorized, State-issued permits are issued to individuals, and only the individual whose name and address appears on the permit at the time of issuance is authorized to take sandhill cranes at the level allowed by the permit, in accordance with provisions of both Federal and State regulations governing the hunting season. The permit must be carried by the permittee when exercising its provisions and must be presented to any law enforcement officer upon request. The permit is not transferable or assignable to another individual, and may not be sold, bartered, traded, or otherwise provided to another person. If the permit is altered or defaced in any way, the permit becomes invalid.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

	Season dates	Limits	
		Bag	Possession
MISSISSIPPI FLYWAY			
Kentucky (1)	Dec. 17–Jan. 15	2	2 per season
Minnesota (1)			
NW Goose Zone	Sept. 10–Oct. 16	1	3
Tennessee (1)(2)	Dec. 3–Jan. 29	3	3 per season
CENTRAL FLYWAY			
Colorado (1)	Oct. 1–Nov. 27	3	9
Kansas (1)(3)(4)	Nov. 9–Jan. 5	3	9
Montana:			
Regular Season Area (1)	Oct. 1–Nov. 27	3	9 per season
Special Season Area (5)	Sept. 10–Oct. 2		2 per season
New Mexico:			
Regular Season Area (1)	Oct. 29–Jan. 29	3	6
Middle Rio Grande Valley Area (5)(6)	Oct. 29–Oct. 30 &	3	6 per season
	Nov. 5 &	3	3 per season
	Nov. 26–Nov. 27 &	3	6 per season
	Dec. 17–Dec. 18 &	3	6 per season
	Jan. 7–Jan. 8	3	6 per season
Southwest Area (5)	Oct. 29–Nov. 6 &	3	6 per season
	Jan. 7–Jan. 8	3	6 per season
Estancia Valley (5)	Oct. 29–Nov. 6	3	6
North Dakota (1):			
Area 1	Sept. 17–Nov. 13	3	9
Area 2	Sept. 17–Nov. 13	2	6
Oklahoma (1)	Oct. 22–Jan. 22	3	9
South Dakota (1)	Sept. 24–Nov. 20	3	9
Texas (1):			
Zone A	Oct. 29–Jan. 29	3	9
Zone B	Nov. 18–Jan. 29	3	9
Zone C	Dec. 17–Jan. 22	2	6
Wyoming:			
Regular Season (Area 7) (1)	Sept. 17–Nov. 13	3	9
Riverton-Boysen Unit (Area 4) (5)	Sept. 17–Oct. 9		1 per season
Big Horn, Hot Springs, Park, and Washakie Counties (Area 6) (5)	Sept. 17–Oct. 9		1 per season
Johnson, Natrona, and Sheridan Counties (Area 8) (5)	Sept. 17–Oct. 9		1 per season
PACIFIC FLYWAY			
Arizona (5)(7):			
Special Season Area	Nov. 18–Dec. 10		3 per season
Idaho (5):			
Areas 1, 3, & 4	Sept. 1–Sept. 30		2 per season
Areas 2 & 5	Sept. 1–Sept. 15		2 per season
Montana (5)(8):			
Zone 1	Sept. 10–Oct. 2	1	1
Zone 2	Sept. 10–Oct. 2	2	2
Zone 3	Sept. 10–Oct. 2	2	2
Zone 4	Sept. 10–Oct. 2	1	1
Utah (5):			
Rich County	Sept. 3–Sept. 11		1 per season
Cache County	Sept. 3–Sept. 11		1 per season
East Box Elder County	Sept. 3–Sept. 11		1 per season
Uintah County	Sept. 17–Oct. 16		1 per season
Wyoming (5):			

	Season dates	Limits	
		Bag	Possession
Areas 1, 2, 3, & 5	Sept. 1–Sept. 8		1 per season

(1) Each person participating in the regular sandhill crane seasons must have a valid sandhill crane hunting permit in their possession while hunting.
(2) In *Tennessee,* the shooting hours are from sunrise to 3 p.m. The season is also closed from January 13 through January 15, 2017.
(3) In *Kansas,* shooting hours are from sunrise until sunset.
(4) In *Kansas,* each person desiring to hunt sandhill cranes is required to pass an annual, online sandhill crane identification examination.
(5) Hunting is by State permit only. See State regulations for further information.
(6) In *New Mexico,* in the Middle Rio Grande Valley Area (Bernardo WMA and Casa Colorado WMA), the season is only open for youth hunters on November 5. See State regulations for further details.
(7) In *Arizona,* season dates are restricted in Game Management Units 30A, 30B, 31, and 32 to November 18 to 20, November 22 to 24, November 26 to 28, November 30 to December 2, December 4 to 6, and December 9 to 11. December 9 to 11 is restricted to youth hunters only. In Game Management Unit 28, the season dates are restricted to November 26 to 28, November 25 to 27, November 30 to December 2, December 4 to 6, December 8 to 10, and December 12 to 14.
(8) In *Montana,* the possession limit is 2 per season.

■ 8. Section 20.107 is revised to read as follows:

§ 20.107 Seasons, limits, and shooting hours for swans.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Hunting is by State permit only.

Federally authorized, State-issued permits are issued to individuals, and only the individual whose name and address appears on the permit at the time of issuance is authorized to take swans at the level allowed by the permit, in accordance with provisions of both Federal and State regulations governing the hunting season. The permit must be carried by the permittee when exercising its provisions and must be presented to any law enforcement officer upon request. The permit is not transferable or assignable to another individual, and may not be sold, bartered, traded, or otherwise provided to another person. If the permit is altered or defaced in any way, the permit becomes invalid.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

NOTE: Successful permittees must immediately validate their harvest by that method required in State regulations.

	Season dates	Limits
ATLANTIC FLYWAY:		
North Carolina	Nov. 12–Jan. 31	1 tundra swan per permit.
Virginia	Nov. 16–Jan 31	1 tundra swan per permit.
CENTRAL FLYWAY (1):		
Montana	Oct. 1–Jan. 5	1 tundra swan per permit.
North Dakota	Oct. 1–Jan. 1	1 tundra swan per permit.
South Dakota	Oct. 1–Dec. 18	1 tundra swan per permit.
PACIFIC FLYWAY (1):		
Montana (2)	Oct. 8–Dec. 1	1 swan per season.
Nevada (3)(4)	Oct. 8–Jan. 8	2 swans per season.
Utah (4)(5)	Oct. 1–Dec. 11	1 swan per season.

(1) See State regulations for description of area open to swan hunting.
(2) In *Montana,* all harvested swans must be reported by way of a bill measurement card within 3 days of harvest.
(3) In *Nevada,* all harvested swans and tags must be checked or registered within 5 days of harvest.
(4) Harvests of trumpeter swans are limited to 5 in Nevada and 10 in Utah. When it has been determined that the quota of trumpeter swans allotted to Nevada and Utah will have been filled, the season for taking of any swan species in the respective State will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.
(5) In *Utah,* all harvested swans and tags must be checked or registered within 3 days of harvest.

■ 9. Section 20.109 is revised to read as follows:

§ 20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Hawking hours are one-half hour before sunrise until sunset except as otherwise restricted by State regulations.

Area descriptions were published in the March 28, 2016 (81 FR 17302) **Federal Register**.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

Limits: The daily bag limit may include no more than 3 migratory game birds, singly or in the aggregate. The possession limit is three times the daily bag limit. These limits apply to falconry during both regular hunting seasons and extended falconry seasons, unless further restricted by State regulations. The falconry bag and possession limits are not in addition to regular season limits. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas.

Although many States permit falconry during the gun seasons, only extended falconry seasons are shown below. Please consult State regulations for details.

	Extended falconry dates
ATLANTIC FLYWAY:	
Delaware	
Doves	Jan. 16–Feb. 1
Rails	Nov. 10–Dec. 16
Woodcock	Oct. 15–Oct. 22 & Jan. 16–Mar. 10
Ducks, mergansers, and coots	Jan. 30–Mar. 3
Brant	Nov. 21–Dec. 2 & Jan. 30–Mar. 10
Florida	
Doves	Jan. 16–Feb. 1
Rails	Nov. 10–Dec. 16
Woodcock	Nov. 24–Dec. 17 & Feb. 1–Mar. 10
Common moorhens	Nov. 10–Dec. 14
Ducks, mergansers, light geese, and coots	Nov. 3–Nov. 12 & Feb. 6–Mar. 3
Georgia	
Ducks, geese, mergansers, coots, moorhens, gallinules, and sea ducks	Nov. 28–Dec. 5
Maine	
Ducks, mergansers, and coots (1):	
North Zone	Dec. 22–Feb. 11
South & Coastal Zones	Jan. 7–Feb. 28
Maryland	
Doves	Jan. 8–Jan. 24
Rails	Nov. 10–Dec. 16
Woodcock	Oct. 1–Oct. 27 & Feb. 7–Mar. 10
Ducks	Feb. 1–Mar. 10
Brant	Feb. 1–Mar. 10
Light Geese	Feb. 28–Mar. 10
Massachusetts	
Ducks, mergansers, sea ducks, and coots	Jan. 30–Feb. 8
New Hampshire	
Ducks, mergansers, and coots:	
Northern Zone	Dec. 13–Jan. 26
Inland Zone	Nov. 7–Nov. 21 & Dec. 28–Jan. 26
Coastal Zone	Jan. 25–Mar. 10
New Jersey	
Woodcock:	
North Zone	Oct. 1–Oct. 14 & Nov. 20–Jan. 15
South Zone	Oct. 1–Nov. 11 & Dec. 4–Dec. 16 & Dec. 31–Jan. 15
Ducks, mergansers, coots, and brant:	
North Zone	Jan. 17–Mar. 10
South Zone	Jan. 17–Mar. 10
Coastal Zone	Jan. 29–Mar. 10
New York	
Ducks, mergansers and coots:	
Long Island Zone	Nov. 1–Nov. 23 & Nov. 28–Dec. 4 & Jan. 30–Feb. 13
Northeastern Zone	Oct. 1–Oct. 7 & Oct. 31–Nov. 4 & Dec. 12–Jan. 13
Southeastern Zone	Oct. 11–Nov. 11 & Jan. 1–Jan. 13
Western Zone	Oct. 1–Oct. 21 & Dec. 5–Dec. 30
North Carolina	
Doves	Oct. 15–Oct. 31
Rails, moorhens, and gallinules	Dec. 3–Jan. 7
Woodcock	Nov. 5–Dec. 3 & Feb. 1–Feb. 28
Ducks, mergansers and coots	Oct. 25–Nov. 5 & Jan. 31–Feb. 18
Pennsylvania	
Doves	Oct. 10–Oct. 14 & Nov. 28–Dec. 9
Rails	Nov. 10–Dec. 16
Woodcock and snipe	Sept. 1–Oct. 14 & Nov. 28–Dec. 17
Moorhens and gallinules	Nov. 10–Dec. 16
Ducks, mergansers, and coots:	
North Zone	Nov. 21–Dec. 19 & Feb. 16–Mar. 10

	Extended falconry dates
South Zone	Oct. 24–Nov. 21 & Feb. 16–Mar. 10
Northwest Zone	Dec. 12–Dec. 26 & Feb. 2–Mar. 10
Lake Erie Zone	Jan. 18–Mar. 10
Canada Geese:	
SJBP Zone	Mar. 2–Mar. 10
AP Zone	Feb. 1–Mar. 10
RP Zone	Mar. 4–Mar. 10
South Carolina	
Ducks, mergansers, and coots	Nov. 2–Nov. 18 & Nov. 27–Dec. 9
Virginia	
Doves	Dec. 23 & Jan. 16–Jan. 31
Woodcock	Oct. 17–Oct. 28 & Nov. 5–Dec. 8 & Jan. 16–Jan. 31
Rails, moorhens, and gallinules	Nov. 19–Dec. 25
Ducks, mergansers, and coots	Nov. 28–Dec. 16 & Jan. 30–Feb. 10
Canada Geese:	
Eastern (AP) Zone	Dec. 17–Dec. 22 & Jan. 30–Feb. 22
Western (SJBP) Zone	Dec. 17–Dec. 18 & Feb. 16–Feb. 22
Brant	Oct. 17–Nov. 15 & Nov. 28–Dec. 16 & Jan. 30–Jan. 31
MISSISSIPPI FLYWAY:	
Arkansas	
Ducks, mergansers, and coots	Feb. 1–Feb. 15
Illinois	
Doves	Nov. 15–Dec. 1
Rails	Sept. 1–Sept. 2 & Nov. 12-Dec. 16
Woodcock	Sept. 1–Oct. 14 & Nov. 29–Dec. 16
Ducks, mergansers, and coots	Feb. 10–Mar. 10
Indiana	
Doves	Oct. 17-Oct. 31 & Jan. 9-Jan. 11
Woodcock	Sept. 20–Oct. 14 & Nov. 29–Jan. 4
Ducks, mergansers, and coots:	
North Zone	Sept. 27–Sept. 30 & Feb. 14–Mar. 10
Central Zone	Oct. 22–Oct. 28 & Feb. 17–Mar. 10
South Zone	Oct. 22–Oct. 28 & Feb. 17–Mar. 10
Iowa	
Ducks, mergansers, and coots:	
North Zone	Dec. 15–Jan. 12
Missouri River Zone	Dec. 15–Jan. 12
South Zone	Dec. 15–Jan. 12
Kentucky	
Ducks, mergansers, and coots	Nov. 28–Dec. 4 & Jan. 30–Feb. 15
Louisiana	
Doves	Sept. 15–Oct. 1
Woodcock	Nov. 2–Dec. 17 &
Rails and moorhens:	
West Zone	Nov. 2–Nov. 11 & Jan. 5–Jan. 31
East Zone	Nov. 3–Nov. 11 & Jan. 5–Jan. 31
Coastal Zone	Nov. 2–Nov. 11 & Jan. 5–Jan. 31
Ducks:	
West Zone	Nov. 3–Nov. 11 & Dec. 5–Dec. 16 & Jan. 23–Jan. 31
East Zone	Nov. 3–Nov. 18 & Dec. 5–Dec. 16 & Jan. 30–Jan. 31
Coastal Zone	Nov. 3–Nov. 11 & Dec. 5–Dec. 16 & Jan. 23–Jan. 31
Michigan	
Ducks, mergansers, coots, and moorhens	Jan. 2–Jan. 26 & Mar. 1–Mar. 10
Minnesota	
Woodcock	Sept. 1–Sept. 23 & Nov. 8–Dec. 16
Rails and snipe	Nov. 8–Dec. 16
Doves	Nov. 30–Dec. 16
Ducks, mergansers, coots, moorhens, and gallinules	Dec. 17–Jan. 31
Mississippi	
Doves	Nov. 14–Nov. 22 & Jan. 16–Jan. 23
Ducks, mergansers and coots	Feb. 5–Mar. 5

	Extended falconry dates
Missouri	
Doves	Nov. 30–Dec. 16
Ducks, mergansers, and coots	Sept. 10–Sept. 25 & Feb. 10–Mar. 10
Tennessee	
Doves	Sept. 29–Oct. 9 & Oct. 31–Nov. 6
Ducks, mergansers, and coots	Sept. 15–Oct. 20
Wisconsin	
Rails, snipe, moorhens, and gallinules:	
North Zone	Sept. 1–Sept. 23 & Nov. 23–Dec. 16
South Zone	Sept. 1–Sept. 30 & Oct. 10–Oct. 14 & Dec. 5–Dec. 16
Mississippi River Zone	Sept. 1–Sept. 30 & Oct. 8–Oct. 14 & Dec. 7–Dec. 16
Woodcock	Sept. 1–Sept. 23 & Nov. 8–Dec. 16
Ducks, mergansers, and coots	Sept. 17–Sept. 18 & Jan. 13–Feb. 19
CENTRAL FLYWAY:	
Kansas	
Ducks, mergansers, and coots:	
Low Plains	Feb. 24–Mar. 10
Montana (2)	
Ducks, mergansers, and coots	Sept. 24–Sept. 30
Nebraska	
Ducks, mergansers, and coots:	
Zone 1	Feb. 25–Mar. 10
Zone 2	Feb. 25–Mar. 10
Zone 3	Feb. 25–Mar. 10
Zone 4	Feb. 25–Mar. 10
New Mexico	
Doves	
North Zone	Nov. 30–Dec. 4 & Dec. 24–Jan. 4
South Zone	Oct. 31-Nov. 7 & Nov. 24–Dec. 2
Ducks and coots	Sept. 17–Sept. 25
Sandhill cranes	
Regular Season Area	Oct. 15–Oct. 28
Estancia Valley Area (3)	Nov. 7–Dec. 27
Common moorhens	Nov. 26–Jan. 1
Sora and Virginia rails	Nov. 26–Jan. 1
North Dakota	
Ducks, mergansers, coots, and snipe	Sept. 5–Sept. 9 & Sept. 12–Sept. 16
Oklahoma	
Ducks, mergansers, and coots:	
Low Plains	Feb. 13–Feb. 27
South Dakota	
Ducks, mergansers, and coots:	
High Plains	Sept. 1–Sept. 8
Low Plains:	
North Zone	Sept. 1–Sept. 23 & Dec. 7–Dec. 16
Middle Zone	Sept. 1–Sept. 23 & Dec. 7–Dec. 16
South Zone	Sept. 15–Oct. 7 & Dec. 21–Dec. 30
Texas	
Doves	Nov. 19–Dec. 5
Rails, gallinules, and woodcock	Jan. 30–Feb. 12
Ducks, mergansers, and coots:	
Low Plains	Jan. 30–Feb. 12
Wyoming	
Doves	Nov. 30–Dec. 16
Rails	Nov. 10–Dec. 16
Ducks, mergansers, and coots	
Zone C1	Sept. 24–Sept. 25 & Oct. 19–Oct. 26
Zone C2 & C3	Sept. 17–Sept. 23 & Dec. 5–Dec. 7
PACIFIC FLYWAY:	
Arizona	
Doves	Sept. 16–Nov. 1
Ducks, mergansers, coots, and moorhens:	
North Zone	Jan. 30–Feb. 2
South Zone	Oct. 3–Oct. 6
California	
Ducks, mergansers, coots, and moorhens:	
Colorado River Zone	Jan. 30–Feb. 1

	Extended falconry dates
Southern Zone	Jan. 30–Feb. 3
Southern San Joaquin Valley Zone	Jan. 30–Feb. 1
Geese:	
Southern Zone (4)	Jan. 30–Feb. 3
New Mexico	
Doves:	
North Zone	Nov. 30–Dec. 4 & Dec. 24–Jan. 4
South Zone	Oct. 31–Nov. 7 & Nov. 24–Dec. 2
Oregon	
Doves	Oct. 31–Dec. 16
Band-tailed pigeons (5)	Sept. 1-Sept. 14 & Sept. 24–Dec. 16
Utah	
Doves	Oct. 31–Dec. 16
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Washington	
Doves	Oct. 31–Dec. 16
Wyoming	
Doves	Nov. 30–Dec. 16
Sora and Virginia rails	Nov. 10–Dec. 16
Ducks, mergansers, and coots	Sept. 17–Sept. 18

(1) In *Maine,* the daily bag and possession limits for black ducks are 1 and 3, respectively.
(2) In *Montana,* the bag limit is 2 and the possession limit is 6.
(3) In *New Mexico,* the bag limit for sandhill cranes in the Estancia Valley Area is 3 per day and the possession limit is 6 per season.
(4) In *California,* in the Imperial County Special Management Area, there is no extended falconry season.
(5) In *Oregon,* no more than 1 pigeon daily in bag or possession.

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